

Before the School Ethics Commission
Docket No.: C70-22
Decision on Motion to Dismiss

Baraah Hammad,
Complainant

v.

Judith Bassford,
Clifton Board of Education, Passaic County,
Respondent

I. Procedural History

The above-captioned matter arises from a Complaint that was filed on June 22, 2022, by Baraah Hammad (Complainant), alleging that Judith Bassford (Respondent), a member of the Clifton Board of Education (Board), violated the School Ethics Act (Act), *N.J.S.A.* 18A:12-21 *et seq.* By correspondence dated June 23, 2022, Complainant was notified that the Complaint was deficient, and required amendment before the School Ethics Commission (Commission) could accept her filing. On June 29, 2022, Complainant cured all defects and filed an Amended Complaint (Complaint) that was deemed compliant with the requirements detailed in *N.J.A.C.* 6A:28-6.3.¹ More specifically, the Complaint avers that Respondent violated *N.J.S.A.* 18A:12-24(a) (in Count 1 -5), *N.J.S.A.* 18A:12-24(b) (in Counts 1-5), *N.J.S.A.* 18A:12-24(c) (in Counts 1-3 and Count 5), *N.J.S.A.* 18A:12-24(f) (in Counts 2-3 and Count 5), and *N.J.S.A.* 18A:12-24(g) (in Counts 1-3 and Count 5), as well as *N.J.S.A.* 18A:12-24.1(a) (in Counts 1-6), *N.J.S.A.* 18A:12-24.1(b) (in Count 6), *N.J.S.A.* 18A:12-24.1(c) (in Counts 1-2 and Counts 4-5), *N.J.S.A.* 18A:12-24.1(e) (in Count 4), *N.J.S.A.* 18A:12-24.1(f) (in Counts 1-5), *N.J.S.A.* 18A:12-24.1(g) (in Count 1 and Count 5), and *N.J.S.A.* 18A:12-24.1(i) (in Count 6) of the Code of Ethics for School Board Members (Code).

On June 29, 2022, the Complaint was served on Respondent via electronic mail, notifying her that ethics charges had been filed against her with the Commission, and advising that she had twenty (20) days to file a responsive pleading.² On August 1, 2022, Respondent filed a Motion to

¹ Complainant initially filed an Amended Complaint on June 23, 2022, and it was served on Respondent on June 24, 2022. However, before Respondent filed a responsive pleading, Complainant filed a second Amended Complaint on June 29, 2022, which was accepted by the Commission, and then served on Respondent on June 29, 2022.

² In order to conduct business during the Coronavirus (COVID-19) pandemic, the Commission implemented an electronic filing system, which remains a permissible method by which the Commission and parties can effectuate service of process. Consequently, service of process was effectuated by the Commission through electronic transmission only.

Dismiss in Lieu of Answer (Motion to Dismiss), and also alleged that the Complaint is frivolous. On September 21, 2022, Complainant filed a response to the Motion to Dismiss and allegation of frivolous filing.

The parties were notified by correspondence dated November 14, 2022, that the above-captioned matter would be discussed by the Commission at its meeting on November 22, 2022, in order to make a determination regarding the Motion to Dismiss and allegation of frivolous filing. Following its discussion on November 22, 2022, the Commission adopted a decision at its meeting on December 20, 2022, finding that the allegations in Counts 1-4 were untimely filed, and granting the Motion to Dismiss as to the claims in Counts 5-6 because Complainant failed to plead sufficient credible facts to support a violation of the Act. The Commission also adopted a decision finding that the Complaint is not frivolous, and denying Respondent's request for sanctions.

II. Summary of the Pleadings

A. *The Complaint*

Complainant initially acknowledges that although “some of the complaints may be past the 180-day statute of limitations,” the information “sets the backdrop of behaviors, actions, and questionable unethical situations that keep occurring” regarding Respondent.

In Count 1, Complainant states that during the *July 8, 2021*, Board meeting, and while on the dais, Respondent was “speaking as the Vice-President of [Clifton Against Substance Abuse (CASA)], an unaffiliated [Board] organization.” Complainant further asserts Respondent “has used her position and influence as a [Board member] to gain access to the Clifton School District [(District)], while also representing CASA,” and Respondent “carries her tasks and agenda within CASA onto the [Board] and vice-versa, sometimes without distinguishing both positions that she holds.” Complainant notes, “There have also been ‘coincidences’ between actions and discussion in ‘executive session’ and discussion during the ‘public session’ of the [Board] meeting by [Respondent’s] family and by members of CASA, particularly the President of the CASA organization, Thomas Whittles.” Based on the foregoing conduct, Complainant contends Respondent has violated *N.J.S.A. 18A:12-24(a)* because she “has impeded on the work of the administration by using her role as a member of the [Board] as a tool for her[] self[-]interest and the interest of the President of [CASA],” and has “shared information with the President of CASA that was not intended for public.” In addition, Respondent “does not delineate between her role as a [Board] member and her role as Vice-President of CASA when she is on the dais” thereby creating a liability for the Board; violated *N.J.S.A. 18A:12-24(b)* because she “has utilized her position as a Board [m]ember as a conduit to gain entrance to the ... District for [CASA], a 501(c)(3)” ; violated *N.J.S.A. 18A:12-24(c)* because she speaks in “the point of view of an organization [(CASA)] while sitting up on the dais during a [Board] meeting[], [and] residents and constituents have knowledge that [she is] an officer of said organization”; violated *N.J.S.A. 18A:12-24(g)* when she stated during a Board meeting that she, “received information from residents and the public during [B]oard meetings,” while in her role as both a Board member and officer of CASA, and Respondent has “shown representation of CASA during [B]oard meetings”; violated *N.J.S.A. 18A:12-24.1(a)* because she “used her role of a Board

[m]ember with no consideration of the law and ethical process of personal gain and the gain of CASA”; violated *N.J.S.A.* 18A:12-24.1(c) because she “has acted outside of her scope of policy making, planning, and appraisal by advocating [on] behalf of members of the CASA organization ... ”; violated *N.J.S.A.* 18A:12-24.1(f) because she “advocated on behalf of CASA, a nonprofit,” and has “relinquished her ‘independent judgment’ to the organization of CASA since [she] serves as the Vice-President,” has repeated the same messages and sentiments as the President of CASA (Whittles), and has spoken “in the point of view of an organization while sitting up on the dais during [Board] meetings”; and violated *N.J.S.A.* 18A:12-24.1(g) because she has shared executive session information with members, and friends from CASA.

In Count 2, Complainant states that Respondent has also “spoken at the podium at CASA events when she was introduced as the Vice-President of CASA and ALSO as a [Board] member.” More specifically, on *August 31, 2021*, Respondent did not note that she was not speaking on behalf of the Board when she addressed the audience at the CASA event. As a result, Complainant contends Respondent violated *N.J.S.A.* 18A:12-24(a) because she spoke from the point of view of CASA at a Board meeting, and then spoke “at the podium at CASA events when she was introduced as the Vice President of CASA and ALSO as the [Board] member”; violated *N.J.S.A.* 18A:12-24(b), *N.J.S.A.* 18A:12-24(c), and *N.J.S.A.* 18A:12-24(f) because Respondent did not “mention or disclaim that she was not representing the [Board],” and if she “says the wrong thing or states something in her speaking opportunity at the podium that is not approved by the [Board], in return it makes ‘The Board’ liable for her comments”; violated *N.J.S.A.* 18A:12-24(g) because she “has not only spoke from the point of view of CASA at the [Board] meetings, but [Respondent] has also spoken at the podium of CASA events when she was introduced as the [VP] of the CASA and ALSO as a [Board] member on August 31, 2021”; violated *N.J.S.A.* 18A:12-24.1(a) and *N.J.S.A.* 18A:12-24.1(c) because she has “violated ethical and legal protocols in representing [CASA] while sitting on the dais during [Board] meetings”; and violated *N.J.S.A.* 18A:12-24.1(f) because she has “advocated on behalf of [CASA]” and has “relinquished her ‘independent judgment’ to the organization of CASA since [she] serves as [its] Vice President.”³

In Count 3, Complainant states that Respondent used the CASA event on *August 31, 2021*, “as a platform to represent the [Board] without notifying the Board President or any Board member.” Complainant further asserts Respondent used “her [Board] campaign profile to create and be an administrator of the CASA Facebook group for her personal gain,” namely “to campaign for her re-election as a sitting [Board] member.” Complainant contends Respondent violated *N.J.S.A.* 18A:12-24(a) when she posted a “self-endorsement for her candidacy dated for November 2, 2021[,] and her position on the ballot as #9” on the CASA Facebook group; violated *N.J.S.A.* 18A:12-24(b) because she “used unwarranted privileges as a [Board] member to give the image of her own support through an outside organization, [CASA]”; violated *N.J.S.A.* 18A:12-24(c) and *N.J.S.A.* 18A:12-24(f) when she posted a “self-endorsement for her candidacy dated for November 2, 2021 and her position on the ballot as #9” on the CASA Facebook group; violated *N.J.S.A.* 18A:12-24(g) because she “used unwarranted privileges as a [Board] member to give the image of her own support through an outside organization,

³ Complainant also cites a violation of *N.J.S.A.* 18A:12-24.1(g) in Count 2, but does not offer any facts in support of this alleged violation.

[CASA]”; violated *N.J.S.A.* 18A:12-24.1(a) because she “used unwarranted privileges as a [Board] member to give the image of her own support through an outside organization, [CASA]”; and violated *N.J.S.A.* 18A:12-24.1(f) because she “did not surrender her personal independent judgment as a sitting board member, she went beyond the scope of her acceptable conduct by disseminating campaign material to the public support for re-election to the [Board].”

In Count 4, Complainant states that at a Board meeting on *June 28, 2021*, Respondent requested that another Board member “be reprimanded and demanded that he step[] down.” According to Complainant, only the Commission “can reprimand or punish a board member,” and despite being told this by Board counsel, Respondent “persisted to act alone under ‘new business.’” Complainant further asserts Respondent violated *N.J.S.A.* 18A:12-24(a) because Respondent “decided under public session to reprimand a [Board] colleague,” “under duress of ... certain public members that were in the audience ...”; violated *N.J.S.A.* 18A:12-24(b) because she “worked outside of her scope as a [Board] member to reprimand another [B]oard colleague, especially when she was told by the [B]oard attorney that it was not her place to do so”; violated *N.J.S.A.* 18A:12-24.1(a) because she “did not uphold the laws and state board of education, she worked outside of her scope as a [Board] member to reprimand another [B]oard colleague, especially when she was told by the board attorney that it was not her place to do so”; violated *N.J.S.A.* 18A:12-24.1(c) because she “did not ‘confine [her] board action to policy making, planning, and appraisal ... when she was told by the [B]oard attorney that it was not her place to do so”; violated *N.J.S.A.* 18A:12-24.1(f) because Respondent “decided under public session to reprimand a [Board] colleague,” “under duress of ... certain public members that were in the audience ...”; and violated *N.J.S.A.* 18A:12-24.1(e) because she “worked outside of her scope as a [Board] member to reprimand another [B]oard colleague, especially when she was told by the [B]oard attorney that it was not her place to do so.”

In Count 5, Complainant states that, at a Board meeting on *January 6, 2022*, the CASA President spoke during the public session, and according to Complainant, Respondent worked with CASA “to continue disrupting the ... Board [meeting] outside of her scope as a [Board] member.” Based on her conduct, Complainant asserts Respondent violated *N.J.S.A.* 18A:12-24(a), *N.J.S.A.* 18A:12-24(b), *N.J.S.A.* 18A:12-24(c), *N.J.S.A.* 18A:12-24.1(a), and *N.J.S.A.* 18A:12-24.1(c) because she “has worked with [people outside] of the [Board] ... to threaten and harass [B]oard members and administration,” and to disrupt the Board “to decide on policy and support the Superintendent”; violated *N.J.S.A.* 18A:12-24(f) because she “has had consistent knowledge of slanderous attacks and threats to not only [Board] members, the [Board] President, but also the administration, by the [CASA President] and the Bassford family”; violated *N.J.S.A.* 18A:12-24(g) because she “has been working with the organization of CASA to continue disrupting the [Board] outside” the scope of being a Board member; violated *N.J.S.A.* 18A:12-24.1(f) because she has “surrendered her independent judgement to special interest for her own personal gain” by working with them to disrupt the Board; and violated *N.J.S.A.* 18A:12-24.1(g) because she “has worked with outside members of the [Board], from the public as listed above, to threaten and harass board members and administration ... has even gone as far to release information about executive session and matters discussed privately.”

In Count 6, Complainant maintains “while sitting on the dais,” Respondent illegally texted with her cell phone on May 5, 2022 (in potential violation of the Open Public Meetings

Act (OPMA)); admitted (on May 19, 2022, and June 2, 2022) to bringing alcohol to the May 5, 2022, Board meeting (although she claimed she was unaware that the bag contained alcohol); and at the May 19, 2022, Board meeting, said “people should have their heads examined,” which “insulted and demeaned a population of students with disabilities and offends [B]oard members, administrators, staff that struggle with PTSD and other mental illnesses.” Given her conduct, Complainant argues that Respondent violated *N.J.S.A.* 18A:12-24.1(a) because she has “broken ... [D]istrict policy, [B]oard ... ethical boundaries[,] and violated legal processes for her own personal gain”; *N.J.S.A.* 18A:12-24.1(b) because she “bullied, degraded, and attacked students of the special needs’ population and staff of the [D]istrict by being a poor role model by telling [B]oard members ‘that they need to get their heads checked’”; and violated *N.J.S.A.* 18A:12-24.1(i) because she “obviously” has not “supported or protected school personnel in proper performance of their school duties by putting the [D]istrict in jeopardy by bringing alcohol to the [Board] meeting, misus[ing] her personal cellphone and target[ing] administrators and personal [(sic)] by telling them ‘they need to get their heads checked.’”

B. *Motion to Dismiss and Allegation of Frivolous Filing*

In her Motion to Dismiss and allegation of frivolous filing, Respondent argues that the Complaint is untimely, in part. Respondent initially notes that this Complaint is “nearly identical” to that filed by Complainant’s spouse and Board member, Feras Awwad (in the matter docketed by the Commission as C09-22), against Respondent; however, that matter was administratively dismissed because Mr. Awwad withdrew his Complaint after being advised that the Board’s “insurance policy prohibited coverage for [e]thics [c]omplaints filed by one Board member against another Board member.” Thereafter, Respondent argues that Mr. Awwad “re-filed the within Complaint against [Respondent], “but fraudulently used his [spouse’s] name as the Complainant.” Moreover, “Complainant has no knowledge of the underlying frivolous allegations contained in the Complaint and was not even aware that her name was used in the subject filing.” However, after discussing the matter with her spouse, Complainant “recalled” drafting and filing the Complaint. Respondent also maintains that “there is no conflict of interest between Respondent being a member of the [Board] and the Vice President of CASA,” or with her position as Senior Parent Consultant with the Association for Special Children and Families. Furthermore, Respondent is hearing impaired and the use of her cell phone during Board meetings “is necessary” (to control and adjust her hearing aids).

Respondent further argues that the assertions in Count 1 regarding July 8, 2021; in Count 2 and Count 3 related to August 31, 2021; and in Count 4 regarding June 28, 2021, are *untimely*. Furthermore, in addition to there not being a conflict related to Respondent’s various roles, Complainant has not provided any evidence to demonstrate that Respondent “attempted to use her roles to influence others,” or that was it “improper for Respondent to list her credentials.” Respondent further maintains she did not “reprimand” a Board member nor “demand that the Board member resign”; instead, she made a “request” during public session, which is not a violation of the Act. Moreover, any information in the Complaint related to executive session, “clearly establishes that [Complainant’s spouse], Mr. Awwad either shared said information with Complainant or is the actual Complainant in this matter.”

Respondent asserts that she cannot respond to Complainant's statements that "pertain to the President of CASA and members of Respondent's family," as they do not "contain any alleged" wrongdoing by Respondent. As to the allegations related to "bringing sealed alcohol into a Board meeting," Respondent notes she admitted to providing her friend (Board member Beltran) with a present/gift, but denied knowing it contained alcohol; Board member Beltran placed the sealed contents in her bag; no one consumed alcohol on school grounds; the Board discussed the incident and agreed that the conduct at issue was "not the type of behavior" meant to be policed; and, moreover, the issue was already resolved. Regarding the use of her personal cell phone, Respondent reaffirms she is hearing impaired and wears hearing aids, which "are controlled and adjusted by her cell phone." Moreover, the Board does not have a policy that "restrict[s] the use of personal devices on the dais. Regarding Complainant's allegations that Respondent "insulted people with disabilities," Respondent argues these "blanket allegations" are "baseless and without merit," as Respondent is "hearing impaired, has a child with special needs, and is employed to help children with disabilities."

If the allegations in Counts 1 through 4 are not considered untimely, Respondent argues, as to the claims in Count 1, there is no conflict between her role as a Board member and her membership in CASA; there are no facts that could substantiate Respondent "even attempting to secure" unwarranted privileges; Respondent's referral to her credentials, without more, is not unethical; CASA has never had a matter pending before the Board; and, moreover, Complainant has not included "a copy of a final decision"; and Complainant has offered absolutely no factual evidence sufficient to establish a violation of any cited provision of the Code.

Regarding the claims in Count 2 and Count 3, Respondent reaffirms that Complainant has not provided any evidence to demonstrate that Respondent violated any of the cited provisions of the Act by being a member of the Board and the Vice President of CASA, or by listing her credentials. Respondent further argues Complainant did not allege any *facts* to "substantiate [Respondent] securing financial gain from her positions on either the [Board] or CASA, and Complainant does not "recognize that CASA did not have an application pending before the Board."

As for the allegations in Count 4, Respondent maintains that she did not "violate any Executive Committee protocols, as the guilty Board member apologized to the public and the rest of the Board at a public meeting on June 28, 2021." Respondent also reaffirms, "a request was made at a public meeting" and such conduct does not violate the Act. As with Counts 1-3, Complainant has failed to produce any *factual* evidence which would support the finding of a violation(s).

Regarding the claims in Count 5, Respondent contends the allegations in this Count do not pertain to her and therefore, "are without merit" and a "response is not warranted."

As for the allegations in Count 6, Respondent maintains although these allegations are timely, the allegations, which are the same as those brought against Board member Beltran (C69-22), "have been resolved" and are now "moot." Respondent further maintains Complainant "fails to assert any [e]thics [v]iolations regarding the gift exchange, and baselessly states" that if a student or teacher had engaged in the same conduct, a different result would have been reached.

Regarding Respondent's use of her cell phone, Respondent again notes she was utilizing her cell phone to adjust her hearing aids, and there is nothing in Board policy or regulation which prohibits the use of her personal cell phones. As for the comment she made at a public Board meeting (for her fellow Board members to get their heads examined), it was not an insult, and "was a demand to fellow Board members to think and act on behalf of" the District," and any insinuation to the contrary is frivolous. Once again, Respondent argues that the Complaint lacks any of the factual evidence necessary to establish a violation of the Code.

Finally, Respondent asserts the Complaint is frivolous because "it is clear that the Complaint in this matter was filed solely for the purpose of harassment, and contrary to the best interest of the [Board]." Furthermore, Respondent claims Complainant "knew or should have known that the matter was without any reasonable basis in law or equity and could not be supported by a good faith argument." Respondent argues the "facts set forth in the Complaint are alleged in bad faith and were filed fraudulently." Therefore, Respondent requests that the Complaint be dismissed, and sanctions imposed on Complainant.

C. Response to Motion to Dismiss and Allegation of Frivolous Filing

In response to the Motion to Dismiss and allegation of frivolous filing, Complainant argues, in summary: Complainant's name was not used for this Complaint, she filed it herself; Complainant's spouse did not coerce or pressure her to file the Complaint; Respondent's attorney is harassing Complainant by repeatedly contacting her; Complainant's husband filed a complaint "but it was never heard or investigated" by the Commission, and the within matter was only filed because Respondent dared her spouse, "maybe you should have your wife write ethics complaints against me[.]" Complainant believes her spouse's husband Board membership should have "no bearing on the acts" at issue; Complainant submitted the Complaint on her own, her spouse asked her not to file it, and her spouse disagrees with the filing; Respondent is lying about Complainant when she said Complainant was not aware that a Complaint was filed in her name and notes counsel's certification is false and should be discounted; and acknowledges that Respondent "has connections across the State of [New Jersey], but this does not mean she is above the law."

D. Public Comments Offered at the Commission's Meeting on November 22, 2022

At the Commission's meeting on November 22, 2022, members of the public appeared by telephone and offered public comment regarding the above-captioned matter. More detailed information regarding the substance of those public comments can be found in the [minutes](#) from the Commission's meeting on November 22, 2022.

III. Analysis

A. Standard for Motion to Dismiss

In determining whether to grant a Motion to Dismiss, the Commission shall review the facts in the light most favorable to the non-moving party (Complainant), and determine whether the allegation(s), if true, could establish a violation(s) of the Act. Unless the parties are otherwise

notified, a Motion to Dismiss and any response is reviewed by the Commission on a summary basis. *N.J.A.C. 6A:28-8.1 et seq.* Thus, the question before the Commission is whether Complainant has pled sufficient facts which, if true, could support a finding that Respondent violated *N.J.S.A. 18A:12-24(a)* (in Count 1 -5); *N.J.S.A. 18A:12-24(b)* (in Counts 1-5); *N.J.S.A. 18A:12-24(c)* (in Counts 1-3 and Count 5); *N.J.S.A. 18A:12-24(f)* (in Counts 2-3 and Count 5); *N.J.S.A. 18A:12-24(g)* (in Counts 1-3 and Count 5); *N.J.S.A. 18A:12-24.1(a)* (in Counts 1-6); *N.J.S.A. 18A:12-24.1(b)* (in Count 6); *N.J.S.A. 18A:12-24.1(c)* (in Counts 1-2 and Counts 4-5); *N.J.S.A. 18A:12-24.1(e)* (in Count 4); *N.J.S.A. 18A:12-24.1(f)* (in Counts 1-5); *N.J.S.A. 18A:12-24.1(g)* (in Count 1 and Count 5); and/or *N.J.S.A. 18A:12-24.1(i)* (in Count 6). The Commission notes that, despite the offering of public comment at its meeting on November 22, 2022, the Commission’s review of this matter was limited solely to the parties’ written submissions.

B. *Untimeliness*

In her Complaint, Complainant concedes that “some of the [counts in the C]omplaint[] may be past the 180-day statute of limitations,” but submits that the information “sets the backdrop of behaviors, actions, and questionable unethical situations that keep occurring” regarding Respondent. In her Motion to Dismiss and allegation of frivolous filing, Respondent argues, as acknowledged by Complainant, that the allegations in Count 1-4 are untimely and must be dismissed.

The Commission’s regulations provide a one hundred eighty (180) day limitation period for filing a complaint. More specifically, *N.J.A.C. 6A:28-6.5(a)* provides, in relevant part:

- (a) Complaints shall be filed within 180 days of notice *of the events which form the basis of the alleged violation(s)*. A complainant shall be deemed to be notified of events which form the basis of the alleged violation(s) *when he or she knew of such events or when such events were made public so that one using reasonable diligence would know or should have known* (emphasis added).

In this case, Complainant did not file a Complaint that was deemed compliant with the Commission’s regulations (*N.J.A.C. 6A:28-6.3*) until June 23, 2022; however, she filed her first deficient Complaint on June 22, 2022. Therefore, and because Complainant’s amendments relate back to the date her Complaint was first received by the Commission, the filing date in this matter is regarded as **June 22, 2022**. See *N.J.A.C. 6A:28-6.7(b)*. One hundred eighty (180) days prior to June 22, 2022, is December 24, 2021.

With the above in mind, and pursuant to *N.J.A.C. 6A:28-6.5(a)*, the Commission must determine when Complainant knew of the events which form the basis of her Complaint, or when such events were made public so that one using reasonable diligence would know, or should have known, of such events.

The Commission recognizes that limitation periods of this type serve to discourage dilatoriness and provide a measure of repose in the conduct of school affairs. *Kaprow v. Berkley*

Township Bd. of Educ., 131 N.J. 571, 587 (1993). Thus, “notice of the alleged violation” must be interpreted in a manner that anticipates the reasonable diligence of complainant(s). In addressing potential violations of the Act, the Commission must balance the public’s interest in knowing of potential violations against the important policy of repose and a respondent’s right to fairness. The time limitations set forth in the regulations must be enforced if the Commission is to operate in a fair and consistent manner. *Phillips v. Streckenbein et al., Edgewater Park Bd. of Educ., Burlington County*, C19-03 (June 24, 2003).

After review, the Commission finds that there is not a credible basis upon which to find that Complainant was unaware of Respondent’s actions/conduct until a date(s) other than when they occurred. Although the Commission recognizes that the regulatory time period may be relaxed, in its discretion, in any case where strict adherence may be deemed inappropriate or unnecessary or may result in injustice, it finds no extraordinary circumstances in the within matter that would compel relaxation. Consequently, the contentions in Counts 1-4, which relate to conduct that purportedly occurred on or about July 8, 2021, August 31, 2021, August 31, 2021, and June 28, 2021, respectively, are time barred and *dismissed*.

C. *Mootness*

As part of her Motion to Dismiss and allegation of frivolous filing, Respondent notes that the conduct at issue in Count 2 was already “discussed and resolved” by the Board at its meeting on June 23, 2022, and, therefore, “any allegations involving this matter are moot.” Despite Respondent’s argument, the Commission reiterates that, even if the Board has taken action to resolve an issue or dispute involving an individual member of the Board, that does not mean, in and of itself, that the conduct/actions at issue cannot independently form the basis for a violation(s) of the Act. Acceptance of Respondent’s proposition would subvert the legislative intent and purpose of the Act. Therefore, the Commission finds that the alleged violations of the Act in Count 2 are not moot, and can be adjudicated before the Commission.

D. *Jurisdiction of the Commission*

In reviewing the filings in this matter, the Commission notes that its authority is limited to enforcing the Act, *N.J.S.A.* 18A:12-21 *et seq.*, a set of minimum ethical standards by which all school officials must abide. In this regard, the Commission has jurisdiction only over matters arising under the Act, and it may not receive, hear, or consider any matter that does not arise under the Act, *N.J.A.C.* 6A:28-1.4(a).

With the jurisdiction of the Commission in mind, to the extent that Complainant seeks a determination from the Commission that the named Respondent’s comments or statements may have constituted defamation (slander or libel); Respondent’s conduct or actions may have violated a Board policy, regulation, and/or bylaw; and/or Respondent’s conduct or actions may have violated the OPMA, the Commission advises that such determinations fall beyond the scope, authority, and jurisdiction of the Commission. Although Complainant may be able to pursue a cause of action in the appropriate tribunal, the Commission is not the appropriate entity to adjudicate those issues. Consequently, those claims are *dismissed*.

E. *Alleged Violations of the Act*

In the remaining Counts of the Complaint (Count 5 and Count 6), Complainant submits that, based on the conduct more fully detailed above, Respondent violated *N.J.S.A. 18A:12-24(a)*, *N.J.S.A. 18A:12-24(b)*, *N.J.S.A. 18A:12-24(c)*, *N.J.S.A. 18A:12-24(f)*, and *N.J.S.A. 18A:12-24(g)* in Count 5, and these provisions state:

a. No school official or member of his immediate family shall have an interest in a business organization or engage in any business, transaction, or professional activity, which is in substantial conflict with the proper discharge of his duties in the public interest;

b. No school official shall use or attempt to use his official position to secure unwarranted privileges, advantages or employment for himself, members of his immediate family or others;

c. No school official shall act in his official capacity in any matter where he, a member of his immediate family, or a business organization in which he has an interest, has a direct or indirect financial involvement that might reasonably be expected to impair his objectivity or independence of judgment. No school official shall act in his official capacity in any matter where he or a member of his immediate family has a personal involvement that is or creates some benefit to the school official or member of his immediate family;

f. No school official shall use, or allow to be used, his public office or employment, or any information, not generally available to the members of the public, which he receives or acquires in the course of and by reason of his office or employment, for the purpose of securing financial gain for himself, any member of his immediate family, or any business organization with which he is associated;

g. No school official or business organization in which he has an interest shall represent any person or party other than the school board or school district in connection with any cause, proceeding, application or other matter pending before the school district in which he serves or in any proceeding involving the school district in which he serves or, for officers or employees of the New Jersey School Boards Association, any school district. This provision shall not be deemed to prohibit representation within the context of official labor union or similar representational responsibilities;

To credit a violation of *N.J.S.A. 18A:12-24(a)*, the Commission must find evidence that Respondent, or a member of her immediate family, has an interest in a business organization, or engaged in any business, transaction, or professional activity which was in substantial conflict with the proper discharge of her duties in the public interest. In order to credit a violation of *N.J.S.A. 18A:12-24(b)*, the Commission must find evidence that Respondent used or attempted

to use her official position to secure an unwarranted privilege, advantage or employment for herself, members of her immediate family, or “others.”

In addition, to credit a violation of *N.J.S.A. 18A:12-24(c)*, the Commission must find evidence that Respondent acted in her official capacity in a matter where she, or a member of her immediate family, had a direct or indirect financial involvement that might reasonably be expected to impair her objectivity, or in a matter where she had a personal involvement that created some benefit to her, or to a member of her immediate family. In order to credit a violation of *N.J.S.A. 18A:12-24(f)*, the Commission must find evidence that Respondent used her public employment, or any information not generally available to the public, and which she received in the course of and by reason of her employment, for the purpose of securing financial gain for herself, her business organization, or a member of her immediate family.

Finally, to credit a violation of *N.J.S.A. 18A:12-24(g)*, the Commission must find evidence that Respondent or a business organization in which she has an interest, represented a person or party other than the Board or the District in connection with a cause, proceeding, application or other matter pending before the District.

After review, the Commission finds that even if the facts as set forth in the Complaint are proven true by sufficient credible evidence, they would not support a finding that Respondent violated *N.J.S.A. 18A:12-24(a)*, *N.J.S.A. 18A:12-24(b)*, *N.J.S.A. 18A:12-24(c)*, *N.J.S.A. 18A:12-24(f)*, and/or *N.J.S.A. 18A:12-24(g)* in Count 5. The only “facts” offered by Complainant are that a member of the public (Mr. Whittles) offered public comment during the Board’s meeting on January 6, 2022, and that, at least according to Complainant, Respondent, in connection with Mr. Whittles’ public comments, worked with CASA “to continue disrupting the ... Board [meeting] outside of her scope as a [Board] member.” However, there is a dearth of facts explaining exactly what Respondent did, or did not, to “assist” CASA and/or Mr. Whittles with his comments, and a review of the video evidence merely shows that Mr. Whittles offered public remarks about the District and its administration, some of which were positive, and some of which were not. Of note, there is absolutely no factual evidence that Respondent spoke during Mr. Whittles’ public comments, or that she engaged in *any* affirmative conduct or action whatsoever (either before or after the meeting). Other than citing to the few minutes of public comment offered by Mr. Whittles, the Complaint offers no facts, circumstances, evidence, conduct, or actions purportedly undertaken by Respondent which could possibly be construed as a violation of the Act. Therefore, the Commission finds that the alleged violations of *N.J.S.A. 18A:12-24(a)*, *N.J.S.A. 18A:12-24(b)*, *N.J.S.A. 18A:12-24(c)*, *N.J.S.A. 18A:12-24(f)*, and *N.J.S.A. 18A:12-24(g)* in Count 5 must be dismissed.

Complainant further submits that Respondent violated *N.J.S.A. 18A:12-24.1(a)*, *N.J.S.A. 18A:12-24.1(b)*, and *N.J.S.A. 18A:12-24.1(i)* in Count 6, and these provisions of the Code provide:

- a. I will uphold and enforce all laws, rules and regulations of the State Board of Education, and court orders pertaining to schools. Desired changes shall be brought about only through legal and ethical procedures.

b. I will make decisions in terms of the educational welfare of children and will seek to develop and maintain public schools that meet the individual needs of all children regardless of their ability, race, creed, sex, or social standing.

i. I will support and protect school personnel in proper performance of their duties.

Pursuant to *N.J.A.C.* 6A:28-6.4(a), violations of *N.J.S.A.* 18A:12-24.1(a), *N.J.S.A.* 18A:12-24.1(b), *N.J.S.A.* 18A:12-24.1(c), *N.J.S.A.* 18A:12-24.1(e), *N.J.S.A.* 18A:12-24.1(f), *N.J.S.A.* 18A:12-24.1(g), and *N.J.S.A.* 18A:12-24.1(i) need to be supported by certain factual evidence, more specifically:

1. Factual evidence of a violation of *N.J.S.A.* 18A:12-24.1(a) shall include a copy of a final decision from any court of law or administrative agency of this State demonstrating that Respondent failed to enforce all laws, rules and regulations of the State Board of Education, and/or court orders pertaining to schools or that Respondent brought about changes through illegal or unethical procedures.

2. Factual evidence of a violation of *N.J.S.A.* 18A:12-24.1(b) shall include evidence that Respondent willfully made a decision contrary to the educational welfare of children, or evidence that Respondent took deliberate action to obstruct the programs and policies designed to meet the individual needs of all children, regardless of their ability, race, color, creed or social standing.

9. Factual evidence of a violation of *N.J.S.A.* 18A:12-24.1(i) shall include evidence that Respondent took deliberate action which resulted in undermining, opposing, compromising or harming school personnel in the proper performance of their duties.

Based on its review of the Complaint, the Commission finds that even if the facts as alleged are proven true by sufficient credible evidence, they would not support a finding that Respondent violated *N.J.S.A.* 18A:12-24.1(a), *N.J.S.A.* 18A:12-24.1(b), and/or *N.J.S.A.* 18A:12-24.1(i) in Count 6. First, and regarding the alleged violation of *N.J.S.A.* 18A:12-24.1(a), Complainant failed to provide, despite being required by *N.J.A.C.* 6A:28-6.4(a)(1), **a copy of a final decision(s)** from any court of law or other administrative agency demonstrating or finding that Respondent violated any specific law(s), rule(s), or regulation(s) of the State Board of Education and/or court orders pertaining to schools, or that she brought about changes through illegal or unethical procedures, when she engaged in any of the actions/conduct set forth in Count 6. Without the required final decision(s), the Commission is compelled to dismiss the alleged violation of *N.J.S.A.* 18A:12-24.1(a).

Second, even if Respondent did use her personal cell phone during a Board meeting (to text another person), did give her friend (and a fellow Board member) a “gift” containing alcohol at the start of the Board meeting (and while on the dais), and did say “people should have their

heads examined,” there is still no evidence that Respondent willfully made a **decision** contrary to the educational welfare of children, or evidence that Respondent took deliberate action to obstruct the programs and policies designed to meet the individual needs of all children (in violation of *N.J.S.A.* 18A:12-24.1(b)), and/or that she took deliberate **action** which resulted in undermining, opposing, compromising or harming school personnel in the proper performance of their duties (in violation of *N.J.S.A.* 18A:12-24.1(i)). At worst, Respondent engaged in conduct perceived to be objectionable by certain members of the public; however, not all conduct by a school official is unethical merely because it may not be viewed as entirely appropriate by a member of the public. To be unethical, a filing party must provide factual evidence to substantiate a violation of the Act but, in this case, no such evidence is presented.

For these reasons, the Commission finds that the alleged violations of *N.J.S.A.* 18A:12-24.1(a), *N.J.S.A.* 18A:12-24.1(b), and *N.J.S.A.* 18A:12-24.1(i) in Count 6 must be dismissed.

IV. Request for Sanctions

At its meeting on November 22, 2022, the Commission considered Respondent’s request that the Commission find the Complaint frivolous, and impose sanctions pursuant to *N.J.S.A.* 18A:12-29(e). Despite Respondent’s argument, the Commission cannot find evidence that might show that Complainant filed the Complaint in bad faith or solely for the purpose of harassment, delay, or malicious injury. The Commission also does not have information to suggest that Complainant knew or should have known that the Complaint was without any reasonable basis in law or equity, or that it could not be supported by a good faith argument for an extension, modification or reversal of existing law. *N.J.A.C.* 6A:28-1.2. Therefore, at its meeting on December 20, 2022, the Commission voted to find the Complaint not frivolous, and to deny the request for sanctions.

V. Decision

Based on the foregoing, and in reviewing the facts in the light most favorable to the non-moving party (Complainant), the Commission voted to find that the allegations in Counts 1-4 were untimely filed, and to **grant** the Motion to Dismiss as to the allegations in Counts 5-6 because Complainant failed to plead sufficient credible facts to support a violation of the Act. The Commission also voted to find that the Complaint is not frivolous, and to deny Respondent’s request for sanctions.

Pursuant to *N.J.S.A.* 18A:12-29(b), the Commission hereby notifies Complainant and Respondent that, for the reasons set forth above, this matter is dismissed. This decision is a final decision of an administrative agency and, therefore, it is appealable only to the Superior Court-Appellate Division. *See, New Jersey Court Rule 2:2-3(a).*

Robert W. Bender, Chairperson

Mailing Date: December 20, 2022

***Resolution Adopting Decision
in Connection with C70-22***

Whereas, at its meeting on November 22, 2022, the School Ethics Commission (Commission) considered the Complaint, the Motion to Dismiss in Lieu of Answer (Motion to Dismiss) and allegation of frivolous filing, and the response to the Motion to Dismiss and allegation of frivolous filing submitted in connection with the above-referenced matter; and

Whereas, at its meeting on November 22, 2022, the Commission discussed finding that the allegations in Counts 1-4 were untimely filed, and granting the Motion to Dismiss as to the allegations in Counts 5-6 because Complainant failed to plead sufficient credible facts to support a violation of the Act; and

Whereas, at its meeting on November 22, 2022, the Commission also discussed finding the Complaint not frivolous, and denying the request for sanctions; and

Whereas, at its meeting on December 20, 2022, the Commission reviewed and voted to approve the within decision as accurately memorializing its actions/findings from its meeting on November 22, 2022; and

Now Therefore Be It Resolved, that the Commission hereby adopts the decision and directs its staff to notify all parties to this action of its decision herein.

Robert W. Bender, Chairperson

I hereby certify that the Resolution was duly adopted by the School Ethics Commission at its public meeting on December 20, 2022.

Kathryn A. Whalen, Esq.
Director, School Ethics Commission