

Before the School Ethics Commission
Docket No.: C123-22
Decision on Motion to Dismiss

Michael Scanlan,
Complainant

v.

Kristie Chisholm,
Upper Township Board of Education, Cape May County,
Respondent

I. Procedural History

The above-captioned matter arises from a Complaint that was filed with the School Ethics Commission (Commission) on December 15, 2022,¹ by Michael Scanlan (Complainant), alleging that Kristie Chisholm (Respondent), a member of the Upper Township Board of Education (Board), violated the School Ethics Act (Act), *N.J.S.A.* 18A:12-21 *et seq.* More specifically, the Complaint avers that Respondent violated *N.J.S.A.* 18A:12-24.1(a) (in Counts 2-3), *N.J.S.A.* 18A:12-24.1(d) (in Count 1), *N.J.S.A.* 18A:12-24.1(e) (in Counts 1-3), *N.J.S.A.* 18A:12-24.1(f) (in Counts 1-3), and *N.J.S.A.* 18A:12-24.1(g) (in Count 2) of the Code of Ethics for School Board Members (Code).

On December 15, 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 January 13, 2023, Respondent filed a Motion to Dismiss in Lieu of Answer (Motion to Dismiss), and also alleged that the Complaint is frivolous. On January 23, 2023, Complainant filed a response to the Motion to Dismiss and allegation of frivolous filing.

The parties were notified by correspondence dated February 13, 2023, that the above-captioned matter would be discussed by the Commission at its meeting on February 21, 2023, in order to make a determination regarding the Motion to Dismiss and allegation of frivolous filing. Following its discussion on February 21, 2023, the Commission adopted a decision at its meeting on March 21, 2023, finding that Complainant failed to plead sufficient credible facts to support a

¹ The School Ethics Commission notes that Complainant filed an electronic copy of his Complaint on December 12, 2022, but hard copies were received on December 15, 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.

finding that Respondent violated *N.J.S.A.* 18A:12-24.1(a) (in Counts 2-3), *N.J.S.A.* 18A:12-24.1(d) (in Count 1), *N.J.S.A.* 18A:12-24.1(e) (in Counts 1-3), *N.J.S.A.* 18A:12-24.1(f) (in Counts 1-3), and/or *N.J.S.A.* 18A:12-24.1(g) (in Count 2), but dismissing the matter on the grounds that the Complaint is frivolous. The Commission also voted to impose a fine in the amount of one hundred dollars (\$100.00) for Complainant's frivolous filing.

II. Summary of the Pleadings

A. *The Complaint*

In Count 1, Complainant states that between October 2, 2022, and November 8, 2022, Respondent used her "personal" and a "group" Facebook account to endorse "Barbieri, Chisholm, and Lentz" for the upcoming Board election. Although both Respondent and Michele Barbieri (Barbieri) were current Board members and seeking reelection, Christine Lentz (Lentz) was an "outside candidate." By endorsing "Barbieri, Chisholm, and Lentz," Respondent "openly and willingly chose not to run with" Bill Sooy (Sooy), another current Board member, and instead "chose to run [with] an outside candidate." According to Complainant, by choosing "to run for re-election with an outside candidate and publicly promot[ing] the ticket on her personal and group social media accounts," Complainant alleges that Respondent violated *N.J.S.A.* 18A:12-24.1(d) because she "openly and willingly chose not to run for [the Board] together with her fellow [B]oard members," and instead chose to run with and endorse an outside candidate; *N.J.S.A.* 18A:12-24.1(e) because Respondent's "private actions of not running with and supporting all incumbents could compromise the [B]oard"; and *N.J.S.A.* 18A:12-24.1(f) because Respondent "decided to run her campaign for re-election with an outside candidate for personal gain and for the gain of friends that share the same political views and/or beliefs."

In Count 2, Complainant states that on October 15, 2022, and October 30, 2022, Respondent "posted and/or shared social media posts on her personal and group Facebook pages that insinuate[] that all three candidates mentioned were sitting members of the" Board. More specifically, the October 15, 2022, post on the "Barbieri, Chisholm, and Lentz for Upper Township School Board" reads, "As members of the UTBOE and then ends with: Vote November 8th BARBIERI-CHISHOLM-LENTZ." In addition, the October 30, 2022, post on the same group Facebook page reads, "Vote BARBIERI-CHISHOLM-LENTZ, working collectively and in collaboration." Based on her social media activity, Complainant contends that Respondent violated *N.J.S.A.* 18A:12-24.1(a) because the information shared in the posts "was misleading to the fact that all three candidates mentioned on their ticket were current[] [Board] members" and, therefore, Respondent's "desired changes to the ... Board were not brought about through legal and ethical procedures; *N.J.S.A.* 18A:12-24.1(e) because Respondent's "private actions of posting and sharing misleading Facebook post[s] insinuating all three candidates on her ticket were [Board] members, did in fact compromise the Board"; *N.J.S.A.* 18A:12-24.1(f) because Respondent "surrendered her independent judgment for personal gain and the gain of friends by posting and sharing misleading Facebook posts" insinuating that all members of the ticket were incumbent Board members; and *N.J.S.A.* 18A:12-24.1(g) because Respondent "did not provide accurate information to the community by posting and sharing a Facebook post that insinuated that all three candidates on her ticket were current members of the [Board]," but Lentz was not.

In Count 3, Complainant states that on September 23, 2022, a member of the community posted a picture of Complainant on Facebook and accused him (Complainant) of “being a racist and a homophobe,” and Respondent “liked this post from her personal Facebook account.” In addition, on November 2, 2022, Barbieri “created and posted a Facebook post directly attacking [Complainant] and [his] family,” and it included a picture of Complainant “where [his] face was inadequately blacked out” and “[y]ou could clearly see it was [Complainant].” Following this post, Respondent “shared and reposted Barbieri’s post on her own personal Facebook account.” In light of her social media activity, Complainant argues that Respondent violated: *N.J.S.A.* 18A:12-24.1(a) because Respondent “willingly liked and shared a Facebook post that directly attacked [Complainant] and [his] family” and, therefore, her “actions were not brought about through ethical procedures”; *N.J.S.A.* 18A:12-24.1(e) because Respondent’s “private actions of liking and sharing the Facebook post that attacked [Complainant] and [his] family, may have compromised the Board” as the posts were “full of false accusations about” Complainant and his family; and *N.J.S.A.* 18A:12-24.1(f) because Respondent “surrendered her independent judgment for personal gain and for the gain of friends when she shared and liked the Facebook post that falsely accused and attacked [Complainant’s] family.” Per Complainant, “[l]iking and sharing a post that calls a family in the [Upper Township School District (District)], racist and homophobic, is way out of line for a sitting ... [B]oard member.”

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

In her Motion to Dismiss, which included an allegation of frivolous filing, Respondent argues, with regard to the allegations in Count 1, the Complaint does not offer any evidence whatsoever that Respondent’s social media activity was carried out in her official capacity as a Board member; contains no allegations that Respondent’s complained of social media activity constituted a “direct order to school personnel” or that it shows she “became directly involved in activities or functions that are the responsibility of school personnel or the day-to-day administration of the school district”; and Complainant has failed to demonstrate how Respondent’s social media activity had the potential to compromise the Board. Furthermore, and as in *Spitz v. Bronfeld and Dart*, Docket No. C65-20, “Complainant has not sufficiently explained how [Respondent’s] “advocacy (in [her] personal/private capacities) for the candidacy of a certain individual(s) would presently, or even prospectively, prejudice [her] independence of judgment in the exercise of [her] official duties.” Regarding any posts that Respondent may have “liked,” there is nothing in the Complaint which alleges that Respondent’s “‘like’ was carried out in her official capacity as a Board member or that she was representing herself to be a Board member.” Finally, “there is absolutely no authority to support Complainant’s claim that a sitting Board member can only run for reelection on a campaign ‘ticket’ with other sitting Board members also up for reelection, and that failure to do so constitutes a violation of the” Act. As such, the alleged violations of *N.J.S.A.* 18A:12-24.1(d), *N.J.S.A.* 18A:12-24.1(e), and *N.J.S.A.* 18A:12-24.1(f) must be dismissed.

Regarding the claims in Count 2, Respondent first argues that Complainant’s reliance on insinuation, as opposed to actual evidence, “cannot be permitted.” Moreover, “Complainant fails to offer any evidence that substantiates the alleged inaccuracy of the information shared by [Respondent] in the posts, or any evidence that establishes that the alleged inaccuracy was other than reasonable mistake or personal opinion or was not attributable to developing

circumstances.” In addition, and based on its recognition that the right to engage in political activity is a right protected by the First Amendment, “the Commission must find that [Respondent’s] social media activity and her political activity related to the campaign, which was carried out as a private citizen, rather than as a sitting Board member, did not violate the ... Act.” Moreover, Respondent maintains there was nothing in her posts “to suggest that she was making it in her official capacity as a Board member” and, instead, “the post at issue was made in the context [of Respondent’s] quest to be reelected to the Board, and was not related to the performance of her duties as a current Board member or any ‘business’ of the Board.” The post(s) in question fails to suggest that they were made in her official capacity, and do not otherwise evidence her use of, or reliance upon, her Board member status, title, or position. Therefore, Complainant has failed to adduce sufficient evidence to establish a violation of *N.J.S.A. 18A:12-24.1(a)*, *N.J.S.A. 18A:12-24.1(e)*, *N.J.S.A. 18A:12-24.1(f)*, and/or *N.J.S.A. 18A:12-24.1(g)*.

As for the contentions in Count 3, and as argued previously, “there is nothing in the Complaint which alleges that, in connection with any of these social media activities, [Respondent] acted in her official capacity as a Board member, represented herself to be a Board member, or otherwise used or relied upon her Board member status, title, or position.” The allegations also “fail to show how [Respondent] brought about changes through illegal or unethical procedures through her social media activity” in violation of *N.J.S.A. 18A:12-24.1(a)*. Moreover, “Complainant has also failed to demonstrate how [Respondent’s] social media activity had the potential to compromise the Board, when there is nothing in the actual posts to suggest that [Respondent] was acting in her official capacity as a Board member.” Furthermore, there is no evidence that Respondent’s social media activity “amounted to her taking ‘action on behalf of, or at the request of, a special interest group or persons organized and voluntarily united in opinion and who adhere to a particular party or cause’” or that she used the schools “in order to acquire some benefit for herself, a member of her immediate family or a friend.” As a result, the alleged violations of *N.J.S.A. 18A:12-24.1(a)*, *N.J.S.A. 18A:12-24.1(e)*, and *N.J.S.A. 18A:12-24.1(f)* must be dismissed.

Finally, Respondent argues that the Complaint is frivolous because Complainant is using the Act “as a vehicle for expressing his displeasure with the outcome of the November 2022 election,” and as an attempt “to restrict the First Amendment rights of sitting Board members and bar them from using social media in their campaign efforts to be reelected to the Board.” Respondent urges the Commission to find the Complaint frivolous, as it was filed “for the sole purpose of harassing Respondent.”

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 that the Motion to Dismiss should be denied as he has “submitted substantial supporting documents” that Respondent violated the provisions of the Act cited in his Complaint. Although Respondent’s “primary defense” is that she was acting as a citizen and taxpayer, and not in her capacity as a member of the Board, Complainant argues that the Act “is subject to interpretation.” Complainant also denies that his complaint is frivolous as he has “submitted an abundance of tangible evidence that supports the validity of [his] Complaint.” Complainant

denies he filed a Complaint because he did not like the outcome of the election, or to harass or intimidate Respondent. Instead, the Complaint was filed “in [g]ood faith as a [p]arent and [t]axpayer in Upper Township,” and the content of the Complaint contains “legitimate, cognizable claims against [Respondent] and her behaviors.”

In the balance of his response, Complainant reiterates the claims set forth in his Complaint, and his position that Respondent violated the Act by voluntarily choosing to run for re-election with an “outside candidate”; by supporting and endorsing her re-election campaign/ticket on Facebook and implying that all members of her ticket were incumbents when, in fact, they were not; and by posting, sharing, and liking posts that make false accusations against families in the District. Despite her argument to the contrary, Complainant submits that Respondent “was in fact acting as a ... [B]oard member and using her ... [B]oard status while engaging” in the social media activity in question. According to Complainant, “[p]ublicly elected officials must always be mindful of how others may view or perceive the capacity in which they are speaking,” and Respondent “was not very mindful” of this when she engaged in the actions complained of in the Complaint.

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:12-24.1(a)* (in Counts 2-3), *N.J.S.A. 18A:12-24.1(d)* (in Count 1), *N.J.S.A. 18A:12-24.1(e)* (in Counts 1-3), *N.J.S.A. 18A:12-24.1(f)* (in Counts 1-3), and/or *N.J.S.A. 18A:12-24.1(g)* (in Count 2).

B. *Jurisdiction of the Commission*

In reviewing the allegations 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 Respondent’s comments/statements may have constituted defamation, slander, and/or libel, 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(s) in the appropriate tribunal, the Commission is not the appropriate entity to adjudicate those claims. Consequently, those contentions are *dismissed*.

C. *Alleged Violations of the Act*

Complainant submits that, based on the conduct more fully detailed above, Respondent violated *N.J.S.A.* 18A:12-24.1(a) (in Counts 2-3), *N.J.S.A.* 18A:12-24.1(d) (in Count 1), *N.J.S.A.* 18A:12-24.1(e) (in Counts 1-3), *N.J.S.A.* 18A:12-24.1(f) (in Counts 1-3), and *N.J.S.A.* 18A:12-24.1(g) (in Count 2), 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.

d. I will carry out my responsibility, not to administer the schools, but, together with my fellow board members, to see that they are well run.

e. I will recognize that authority rests with the board of education and will make no personal promises nor take any private action that may compromise the board.

f. I will refuse to surrender my independent judgment to special interest or partisan political groups or to use the schools for personal gain or for the gain of friends.

g. I will hold confidential all matters pertaining to the schools which, if disclosed, would needlessly injure individuals or the schools. In all other matters, I will provide accurate information and, in concert with my fellow board members, interpret to the staff the aspirations of the community for its school.

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(d), *N.J.S.A.* 18A:12-24.1(e), *N.J.S.A.* 18A:12-24.1(f), and *N.J.S.A.* 18A:12-24.1(g) 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.

4. Factual evidence of a violation of *N.J.S.A.* 18A:12-24.1(d) shall include, but not be limited to, evidence that Respondent gave a direct order to school personnel or became directly involved in activities or functions that are the responsibility of school personnel or the day-to-day administration of the school district or charter school.

5. Factual evidence of a violation of *N.J.S.A.* 18A:12-24.1(e) shall include evidence that Respondent made personal promises or took action beyond the

scope of her duties such that, by its nature, had the potential to compromise the board.

6. Factual evidence of a violation of *N.J.S.A.* 18A:12-24.1(f) shall include evidence that Respondent took action on behalf of, or at the request of, a special interest group or persons organized and voluntarily united in opinion and who adhere to a particular political party or cause; or evidence that Respondent used the schools in order to acquire some benefit for herself, a member of her immediate family or a friend.

7. Factual evidence of a violation of the confidentiality provision of *N.J.S.A.* 18A:12-24.1(g) shall include evidence that Respondent took action to make public, reveal or disclose information that was not public under any laws, regulations or court orders of this State, or information that was otherwise confidential in accordance with board policies, procedures or practices. Factual evidence that Respondent violated the inaccurate information provision of *N.J.S.A.* 18A:12-24.1(g) shall include evidence that substantiates the inaccuracy of the information provided by Respondent and evidence that establishes that the inaccuracy was other than reasonable mistake or personal opinion or was not attributable to developing circumstances.

Based on its review, the Commission finds that even if the facts as pled in the Complaint are proven true by sufficient credible evidence, they would not support a violation(s) of *N.J.S.A.* 18A:12-24.1(a) (in Counts 2-3), *N.J.S.A.* 18A:12-24.1(d) (in Count 1), *N.J.S.A.* 18A:12-24.1(e) (in Counts 1-3), *N.J.S.A.* 18A:12-24.1(f) (in Counts 1-3), and/or *N.J.S.A.* 18A:12-24.1(g) (in Count 2). Regarding the stated violations of *N.J.S.A.* 18A:12-24.1(a) in Counts 2-3, Complainant failed to provide **a copy of a final decision** 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 Counts 2-3. If Complainant could provide, within the period of limitations, “a final decision from any court of law or administrative agency of this State” demonstrating that an individual school official, including Respondent, acted contrary to the laws, rules, and regulations promulgated by the State Board of Education, and/or a court order pertaining to schools, or that she brought about changes through illegal or unethical procedures, a violation(s) of *N.J.S.A.* 18A:12-24.1(a) could *then* be substantiated.

With regard to the purported violations of *N.J.S.A.* 18A:12-24.1(d) (in Count 1), *N.J.S.A.* 18A:12-24.1(e) (in Counts 1-3), *N.J.S.A.* 18A:12-24.1(f) (in Counts 1-3), and *N.J.S.A.* 18A:12-24.1(g) (in Count 2), the Commission finds that even if Respondent chose “to run for re-election with an outside candidate and publicly promot[ed] the ticket on her personal and group social media accounts”; “posted and/or shared social media posts on her personal and group Facebook pages that,” according to Complainant, insinuated that “all three candidates mentioned were sitting members of the” Board; and shared and reposted a social media post on her own personal Facebook account, none of these actions even remotely approach evidence that Respondent gave a direct order to school personnel or became directly involved in activities or functions that are

the responsibility of school personnel or the day-to-day administration of the school district or charter school (*N.J.S.A.* 18A:12-24.1(d)); evidence that Respondent made personal promises or took action beyond the scope of her duties such that, by its nature, had the potential to compromise the board (*N.J.S.A.* 18A:12-24.1(e)); evidence that Respondent took action on behalf of, or at the request of, a special interest group or persons organized and voluntarily united in opinion and who adhere to a particular political party or cause; or evidence that Respondent used the schools in order to acquire some benefit for herself, a member of her immediate family or a friend (*N.J.S.A.* 18A:12-24.1(f)); and/or evidence that substantiates the purported inaccuracy of the information provided by Respondent and evidence that establishes that the inaccuracy was other than reasonable mistake or personal opinion or was not attributable to developing circumstances (*N.J.S.A.* 18A:12-24.1(g)).

As further detailed below, the selection of one's running mate, and the creation, sharing, or reposting of social media posts, based on the circumstances at issue here, do not implicate unethical behavior or conduct, to any extent.

IV. Request for Sanctions

In her Motion to Dismiss, Respondent argues that the Complaint is frivolous, and that the Commission should impose sanctions for the frivolous filing. In this regard, Respondent asserts that the Complaint is frivolous because Complainant is using the Act "as a vehicle for expressing his displeasure with the outcome of the November 2022 election," and as an attempt "to restrict the First Amendment rights of sitting Board members and bar them from using social media in their campaign efforts to be reelected to the Board."

Complainant denies that the Complaint is frivolous because he has "submitted an abundance of tangible evidence that supports the validity of [his] Complaint," and denies he filed the Complaint because he did not like the outcome of the election, or to harass or intimidate Respondent. Complainant maintains that the Complaint was filed "in [g]ood faith as a [p]arent and [t]axpayer in Upper Township," and the content of the Complaint contains "legitimate, cognizable claims against [Respondent] and her behaviors."

When there is an allegation that a Complaint is frivolous, as was asserted by Respondent in connection with the above-captioned matter, the Commission's regulations state:

(a) Upon receipt of the complainant's response to an allegation that the complaint is frivolous pursuant to *N.J.A.C.* 6A:28-7.2(b) or 8.2(a) or the expiration of the time for filing such a response, the Commission shall make a determination by majority vote as to whether a complaint is frivolous.

1. Where the Commission finds that a complaint is frivolous, such a finding shall constitute sole grounds for dismissal. Such dismissal shall constitute final agency action.

(b) Pursuant to *N.J.S.A.* 18A:12-29(e), the Commission may impose a fine not to exceed \$500.00.

N.J.A.C. 6A:28-10.4.

A “frivolous complaint” is defined as a complaint determined by the Commission to be *either*:

- 1) Commenced, used or continued in bad faith, solely for the purpose of harassment, delay or malicious injury; or
- 2) One which the complainant knew, or should have known, was without any reasonable basis in law or equity and 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.

In order to find a Complaint frivolous, the Commission need only determine that one of the two aforementioned prongs is satisfied. In rendering its determination, the Commission considers the totality of the circumstances. *See, Patricia Lee et al. v. Barri Beck, Union Township Bd. of Ed., Union County*, C01-05 (September 27, 2005). Here, and on the basis of the record before it, the Commission finds that the Complaint is frivolous because Complainant knew, or should have known, that his Complaint was without any reasonable basis in law or equity and could not be supported by a good faith argument for an extension, modification, or reversal of existing law.

As discussed *supra*, even when granting all inferences in favor of the non-moving party (Complainant), Complainant failed to plead sufficient credible facts to support a finding that Respondent violated *N.J.S.A.* 18A:12-24.1(a) (in Counts 2-3), *N.J.S.A.* 18A:12-24.1(d) (in Count 1), *N.J.S.A.* 18A:12-24.1(e) (in Counts 1-3), *N.J.S.A.* 18A:12-24.1(f) (in Counts 1-3), and/or *N.J.S.A.* 18A:12-24.1(g) (in Count 2).

It is not within reason, as suggested by Complainant in Count 1, that whenever a currently seated member of the Board chooses to run for reelection, and also chooses to run with a running mate(s), they must run with another currently seated member of the Board. All Board candidates are free to align themselves with the running mate of their choice (or on their own), as well as, free to run on the platform that they feel is best suited for the District and the needs of the District’s students. Mandating and limiting an incumbent’s running mate to another incumbent would subvert the purpose of the election process and impinge on the rights of individuals to choose how they want to engage in the electoral process. In short, Respondent’s failure to choose a similarly situated incumbent as a running mate could never be regarded as unethical.

Regarding the assertions in Count 2, the Commission steadfastly disagrees with Complainant’s perception that Respondent’s social media posts implied or insinuated that both of her running mates, namely Barbieri and Lentz, are currently seated members of the Board. To the contrary, Respondent’s social media posts, which were on her personal campaign page, only evidence their collective campaign slogan and that together, “BARBIERI-CHISHOLM-LENTZ”

would benefit the Board. There is nothing in Respondent’s social media posts which explicitly states that they are current and active members of the Board, only that, if elected, they would *all* bring a shared vision to the Board. Complainant’s reading of Respondent’s social media posts to the contrary is patently unreasonable.

Finally, and with regard to the allegations in Count 3, the Commission agrees with Respondent that merely “liking” the post of another person, or the mere reposting and sharing of a post, from her personal social media account, does not, based on the facts and circumstances presented here, morph her conduct into official conduct. In other words, in this case, a reasonable member of the public could *not* possibly perceive Respondent’s mere “liking” of a social media post, or the mere reposting and sharing of a post, from her personal social media account as speaking in her official capacity, or pursuant to her official duties as a member of the Board.

For the aforementioned reasons, the Commission finds, pursuant to *N.J.S.A.* 18A:12-29(e), that the Complaint is frivolous, and orders Complainant to pay a fine in the amount of one hundred dollars (\$100.00).

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 Complainant failed to plead sufficient credible facts to support a finding that Respondent violated *N.J.S.A.* 18A:12-24.1(a) (in Counts 2-3), *N.J.S.A.* 18A:12-24.1(d) (in Count 1), *N.J.S.A.* 18A:12-24.1(e) (in Counts 1-3), *N.J.S.A.* 18A:12-24.1(f) (in Counts 1-3), and/or *N.J.S.A.* 18A:12-24.1(g) (in Count 2), but to dismiss the above-captioned matter on the grounds that the Complaint is frivolous. The Commission also voted to impose a fine in the amount of one hundred dollars (\$100.00) for Complainant’s frivolous filing. Complainant’s payment must be sent to the Commission within thirty (30) days, and must be made payable to the State of New Jersey.

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: March 21, 2023

**Resolution Adopting Decision
in Connection with C123-22**

Whereas, at its meeting on February 21, 2023, 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 February 21, 2023, the Commission discussed finding that Complainant failed to plead sufficient credible facts to support the allegations that Respondent violated *N.J.S.A.* 18A:12-24.1(a) (in Counts 2-3), *N.J.S.A.* 18A:12-24.1(d) (in Count 1), *N.J.S.A.* 18A:12-24.1(e) (in Counts 1-3), *N.J.S.A.* 18A:12-24.1(f) (in Counts 1-3), and/or *N.J.S.A.* 18A:12-24.1(g) (in Count 2); and

Whereas, at its meeting on February 21, 2023, the Commission discussed finding that the Complaint is frivolous, and imposing a fine in the amount of one hundred dollars (\$100.00) for the frivolous filing; and

Whereas, at its meeting on March 21, 2023, the Commission reviewed and voted to approve the within decision as accurately memorializing its actions/findings from its meeting on February 21, 2023; 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 March 21, 2023.

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