

***Before the School Ethics Commission***  
***Docket No.: C33-19***  
***Decision on Motion to Dismiss***

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**Theodore Boler,**  
***Complainant***

v.

**Heather Martindale,**  
**Burch Charter School of Excellence Board of Trustees, Essex County,**  
***Respondent***

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**I. Procedural History**

This matter arises from a Complaint that was filed on May 13, 2019, by Theodore Boler (Complainant), the former Chief School Administrator (CSA) for the Burch Charter School of Excellence (BCSE), alleging that Heather Martindale (Respondent), a member and President of the BCSE Board of Trustees, violated the School Ethics Act (Act), *N.J.S.A. 18A:12-21 et seq.* By correspondence dated May 14, 2019, Complainant was notified that the Complaint was deficient, and required amendment before the School Ethics Commission (Commission) could accept his filing. On May 23, 2019, 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*. The Complaint alleges that Respondent violated *N.J.S.A. 18A:12-24.1(a)* and *N.J.S.A. 18A:12-24.1(i)* of the Code of Ethics for School Board Members (Code) in Count 1; violated *N.J.S.A. 18A:12-24.1(a)*, *N.J.S.A. 18A:12-24.1(c)*, *N.J.S.A. 18A:12-24.1(d)*, and *N.J.S.A. 18A:12-24.1(i)* of the Code in Count 2; and violated *N.J.S.A. 18A:12-24.1(a)* of the Code in Count 3.

On May 24, 2019, the Complaint was served on Respondent, via regular and certified mail, notifying her that charges were filed against her with the Commission, and advising that she had twenty (20) days to file a responsive pleading. On July 1, 2019, Respondent filed a Motion to Dismiss in Lieu of Answer (Motion to Dismiss), and also alleged that the Complaint is frivolous. On July 26, 2019, Complainant filed a response to the Motion to Dismiss and allegation of frivolous filing.

The parties were notified by correspondence dated August 20, 2019, that this matter would be placed on the Commission's agenda for its meeting on August 27, 2019, in order to make a determination regarding the Motion to Dismiss and allegation of frivolous filing. At its meeting on August 27, 2019, the Commission considered the filings in this matter and, at its meeting on September 24, 2019, the Commission voted to find that the allegations in Count 3 were timely filed but to, nonetheless, grant the Motion to Dismiss in its entirety because Complainant failed to plead sufficient, credible facts to support a finding that Respondent

violated *N.J.S.A.* 18A:12-24.1(a) or *N.J.S.A.* 18A:12-24.1(i) as alleged in Count 1; violated *N.J.S.A.* 18A:12-24.1(a), *N.J.S.A.* 18A:12-24.1(c), *N.J.S.A.* 18A:12-24.1(d), or *N.J.S.A.* 18A:12-24.1(i) as argued in Count 2; and/or violated *N.J.S.A.* 18A:12-24.1(a) as contended in Count 3. The Commission also voted to find the Complaint not frivolous, and to deny Respondent's request for sanctions.

## **II. Summary of the Pleadings**

### **A. *The Complaint***

In Count 1, Complainant (the former CSA) asserts that during the public evaluation of the CSA at the BCSE Board of Trustees meeting on March 18, 2019, Respondent (the President) did not allow him "the opportunity to speak/respond to the statements/ratings" regarding his evaluation. According to Complainant, the BCSE Board of Trustees "has consistently failed to provide timely and accurate evaluations of the CSA." Therefore, Complainant asserts that Respondent violated *N.J.S.A.* 18A:12-24.1(a) and *N.J.S.A.* 18A:12-24.1(i).

In Count 2, Complainant contends that, at the BCSE Board of Trustees meeting on March 18, 2019, Respondent violated *N.J.S.A.* 18A:12-24.1(a), *N.J.S.A.* 18A:12-24.1(c), *N.J.S.A.* 18A:12-24.1(d) and *N.J.S.A.* 18A:12-24.1(i) because the BCSE Board of Trustees approved and entered into a contract with an educational consultant without the input or approval of the CSA (Complainant).

In Count 3, Complainant asserts that, on "March 18, 2019," Respondent violated *N.J.S.A.* 18A:12-24.1(a) because the BCSE Board of Trustees "misrepresented the facts by stating Resolution 08132018 was tabled and never approved." However, Complainant states that he received a copy of the Resolution on March 15, 2019, and it indicated that the resolution was "voted on and approved," and included an agreement to compensate the CSA for unused vacation time. According to Complainant, the BCSE Board of Trustees "failed to act on [the] Resolution."

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

Following receipt of the Complaint, Respondent filed a Motion to Dismiss and allegation of frivolous filing. As a general matter, Respondent notes that, with regard to Count 1, Complainant was offered the opportunity to publicly respond to his "performance and self-assessment" at his pre-evaluation conference (which he did); was given an opportunity to provide any documentation and/or evidence of his performance (which he did not); and was offered an opportunity to discuss the "Board's overall ratings" at his summary conferences (which he did). Respondent also maintains that all of Complainant's evaluations were completed well in advance of the statutory deadline (July 1). As for Count 2, Respondent submits that Complainant was well aware of the Board's desire to hire an educational consultant, and the issue was raised at no less than five (5) Board meetings, and Complainant was present at each meeting. Regarding Count 3, the Resolution received by Complainant clearly notes that it was tabled and, moreover, Complainant was present at the meeting at which it was tabled.

In more specific response to Count 1, Respondent denies that she violated *N.J.S.A.* 18A:12-24.1(a), and argues that Complainant failed to provide, cite, identify or include any evidence of a final decision from any court of law or administrative agency demonstrating that Respondent failed to comply with laws, rules, regulations, and/or court orders pertaining to schools or that Respondent brought about changes through illegal or unethical procedures. As such, the alleged violation of *N.J.S.A.* 18A:12-24.1(a) should be dismissed. Respondent also argues that Complainant failed to provide any credible factual evidence that there was a deliberate action by Respondent that undermined, opposed, compromised, or harmed Complainant in the proper performance of his duties (as is required to support of a violation of *N.J.S.A.* 18A:12-24.1(i)). Respondent maintains that Complainant was offered several opportunities to “address any concerns” he had regarding his evaluation. The meeting on March 18, 2019, was the Board’s “compilation meeting,” which was “the Board’s opportunity to review all documents and evidence to compile their answers for the evaluation,” not for Complainant to respond to his evaluation (which again, he was afforded this opportunity both prior to and after the “compilation meeting”). Respondent also notes that Complainant had the right to supplement his performance data if he disagreed with his evaluation, but he failed to do so. Therefore, the alleged violation of *N.J.S.A.* 18A:12-24.1(i) should also be dismissed.

Regarding Count 2, Respondent argues that Complainant has failed to provide any evidence (or factual basis) to support his claims, such as a final decision from a court of law or administrative agency 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 (as is required to establish a violation of *N.J.S.A.* 18A:12-24.1(a)); evidence that Respondent took board action to effectuate policies and plans without consulting those affected by such policies or plans, or took action that was unrelated to her duties as a Board member (as is required to establish a violation of *N.J.S.A.* 18A:12-24.1(c)); 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 charter school (as is required to establish a violation of *N.J.S.A.* 18A:12-24.1(d)); or evidence that Respondent took deliberate action which resulted in undermining, opposing, compromising or harming school personnel in the proper performance of their duties (as is required to establish a violation of *N.J.S.A.* 18A:12-24.1(i)). Furthermore, Respondent asserts that Complainant was well aware of the BCSE Board of Trustees’ desire to hire a consultant, and although Complainant’s “input and concerns” regarding the hiring of an educational consultant were “an important consideration for the Board,” the final decision to hire the consultant rests with the Board, not with Complainant. Therefore, Respondent asserts that Count 2 should be dismissed.

As to the purported violation of *N.J.S.A.* 18A:12-24.1(a) in Count 3, Respondent argues this claim is untimely, and time barred. Respondent asserts that Complainant’s allegation refers to the Board’s action on August 13, 2018, which is “nearly nine (9) months prior to the filing of the Complaint.” The time to file this claim expired on February 9, 2019, and Complainant filed his Amended Complaint on May 23, 2019, “over 100 days past the presented deadline.” Respondent argues that even if not time barred, this Count should be dismissed because it is a “gross misstatement of the facts, and simply false.” Moreover, even if the claims in Count 3 were true, which they are not, Complainant failed to support a violation of *N.J.S.A.* 18A:12-24.1(a)

because he did not provide, refer, or cite to a final decision from a court of law or administrative agency 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. For these reasons, Respondent asserts Count 3 should be dismissed.

Finally, Respondent alleges the Complaint is frivolous. Respondent argues that “it is clear” that Complainant filed his Complaint “in bad faith for the purpose of harassing and causing malicious injury” to Respondent, and Complainant “knew or should have known that this Complaint was without any reasonable basis in law or equity, and that it could not be supported by a good faith argument for an extension, modification or reversal of existing law.” Respondent argues that as the CSA, Complainant should have known the proper evaluation procedures, that the Board has the authority to hire outside vendors as a function of their fiduciary responsibilities, and what action the Board took regarding his request for payout of his vacation time since he was present when the issue was discussed. As such, Respondent asserts the Complaint is frivolous.

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

In response to the Motion to Dismiss and frivolous allegation, Complainant reiterated his claims and offered additional exhibits in defense of his Complaint. As to the allegation that the Complaint is frivolous, Complainant noted that, “If my case is *frivolous* then the Constitution is *frivolous*.”

## **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 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 alleged sufficient facts which, if true, could support a finding that Respondent violated *N.J.S.A. 18A:12-24.1(a)* or *N.J.S.A. 18A:12-24.1(i)* as alleged in Count 1, violated *N.J.S.A. 18A:12-24.1(a)*, *N.J.S.A. 18A:12-24.1(c)*, *N.J.S.A. 18A:12-24.1(d)*, or *N.J.S.A. 18A:12-24.1(i)* as argued in Count 2, and/or violated *N.J.S.A. 18A:12-24.1(a)* as contended in Count 3.

### **B. *Alleged Untimeliness***

In her Motion to Dismiss, Respondent argues that the allegations in Count 3 of the Complaint are time barred because they relate to action taken by the BCSE Board of Trustees at its meeting on August 13, 2018, but Complainant did not file his Complaint until May 23, 2019, which was “**over 100** days past the prescribed deadline.” Complainant claims that he did not receive a copy of the Resolution in question until March 15, 2019.

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).

As applied here, although Complainant did not file a Complaint that was deemed compliant with the Commission's regulations (*N.J.A.C. 6A:28-6.3*) until May 23, 2019, he filed his first deficient Complaint on May 13, 2019; therefore, and because Complainant's amendments relate back to the date his Complaint was *first* received by the Commission, the filing date in this matter is **May 13, 2019**. See *N.J.A.C. 6A:28-6.7(b)*.

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 his Complaint, or when such events were made public so that one using reasonable diligence would know, or should have known, of such events. Based on its review of the filings in this matter, it appears that Resolution #08132018-006 was – as argued by Respondent – initially discussed by the BCSE Board of Trustees at its meeting on August 13, 2018. However, it also appears that Resolution #08132018-006 was then discussed at the BCSE Board of Trustees meeting on February 11, 2019.

In his Complaint and in his response to the Motion to Dismiss, Complainant claims that he did not receive a copy of Resolution #08132018-006 until March 15, 2019. For purposes of ruling on this Motion to Dismiss, and because the Commission must construe the facts in the light most favorable to Complainant, the Commission accepts Complainant's representation that he did not receive a copy of Resolution #08132018-006 until March 15, 2019.

Because Complainant filed his first deficient Complaint on May 13, 2019, which was clearly within one hundred eighty (180) days of March 15, 2019, the Commission finds that the allegations in Count 3 were timely filed, and are not time barred.

### **C. *Alleged Code Violations***

In the Complaint, Complainant alleges that Respondent violated *N.J.S.A. 18A:12-24.1(a)* and *N.J.S.A. 18A:12-24.1(i)* in Count 1, violated *N.J.S.A. 18A:12-24.1(a)*, *N.J.S.A. 18A:12-24.1(c)*, *N.J.S.A. 18A:12-24.1(d)*, and *N.J.S.A. 18A:12-24.1(i)* in Count 2, and violated *N.J.S.A. 18A:12-24.1(a)* in Count 3. 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.

c. I will confine my board action to policy making, planning, and appraisal, and I will help to frame policies and plans only after the board has consulted those who will be affected by them.

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.

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

Before more fully addressing the allegations in each Count, the Commission wishes to clarify that its jurisdiction is limited to enforcing the provisions of the Act, *N.J.S.A. 18A:12-21 et seq.*, a set of minimum ethical standards by which all school officials must abide. The Commission has jurisdiction only over matters arising under the Act, and may not receive, hear, or consider any pleadings, motion papers, or documents of any kind relating to any matter that does not arise under the Act. *N.J.A.C. 6A:28-1.4(a)*.

### ***Count 1***

In Count 1, Complainant alleges that because Respondent denied him the opportunity to “speak/respond to [his] statements/ratings” at the BCSE Board of Trustees meeting on March 18, 2019, Respondent “has consistently failed to provide timely and accurate evaluations of the CSA” and, thereby, violated *N.J.S.A. 18A:12-24.1(a)* and *N.J.S.A. 18A:12-24.1(i)*. Respondent counters that, regarding the alleged violation of *N.J.S.A. 18A:12-24.1(a)*, Complainant failed to provide, cite, identify or include any evidence of a final decision from any court of law or administrative agency demonstrating that Respondent failed to comply with laws, rules, regulations, and/or court orders pertaining to schools or that Respondent brought about changes through illegal or unethical procedures. In addition, as to the alleged violation of *N.J.S.A. 18A:12-24.1(i)*, Complainant failed to provide any credible factual evidence that there was a deliberate action by Respondent that undermined, opposed, compromised, or harmed Complainant in the proper performance of his duties.

As set forth in *N.J.A.C. 6A:28-6.4(a)(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.

After 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)*. More specifically, despite being required by *N.J.A.C. 6A:28-6.4(a)(1)*, the Commission finds that Complainant has not provided **a copy of a final decision(s)** from any court of law or other administrative agency demonstrating that Respondent and/or the BCSE Board of Trustees violated a law, rule, or regulation pertaining to his performance review/evaluation. Absent such a final decision, and even if the allegations may be actionable in another forum, the Commission finds that there is insufficient credible evidence to support a

finding that Respondent violated *N.J.S.A.* 18A:12-24.1(a). In addition, to the extent that Complainant seeks a determination from the Commission that Respondent and/or the BCSE Board of Trustees violated a specific statute (law), regulation, or policy regarding his performance review/evaluation, such a determination falls outside the scope, authority, and jurisdiction of the Commission. Therefore, the Commission finds that the alleged violation of *N.J.S.A.* 18A:12-24.1(a) in Count 1 should be dismissed.

Pursuant to *N.J.A.C.* 6A:28-6.4(a)(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(i). Even if Respondent and/or the BCSE Board of Trustees did not provide Complainant with the opportunity to respond to his evaluation at a public meeting, Respondent was not, at the time this purported refusal occurred, performing his duties and responsibilities as the CSA. Instead, it was the BCSE Board of Trustees that was performing its duties and responsibilities as the entity charged with evaluating the CSA. In addition, there are no facts in the Complaint which establish, or suggest, that the denial of the opportunity to respond at the public meeting on March 18, 2019, in and of itself, resulted in undermining, opposing, compromising, or harming the CSA. Instead, it was the overall negative review and evaluation of the CSA which adversely affected his employment. While there are other processes and procedures in place which permit Complainant to challenge the determination of the BCSE Board of Trustees, and other forums within which Complainant can argue that the BCSE Board of Trustees failed to comply with applicable statutes and/or regulations, the Commission is not the appropriate forum for such determinations. As a result, the Commission finds that the alleged violation of *N.J.S.A.* 18A:12-24.1(i) in Count 1 should be dismissed.

### ***Count 2***

In Count 2, Complainant argues that because the BCSE Board of Trustees approved and entered into a contract with an educational consultant without seeking the CSA's (his) input or approval, Respondent violated *N.J.S.A.* 18A:12-24.1(a), *N.J.S.A.* 18A:12-24.1(c), *N.J.S.A.* 18A:12-24.1(d) and *N.J.S.A.* 18A:12-24.1(i). Respondent counters that Complainant has failed to provide a final decision from a court of law or administrative agency 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 (as is required to establish a violation of *N.J.S.A.* 18A:12-24.1(a)); evidence that Respondent took board action to effectuate policies and plans without consulting those affected by such policies or plans, or took action that was unrelated to her duties as a Board member (as is required to establish a violation of *N.J.S.A.* 18A:12-24.1(c)); 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 charter school (as is required to establish a violation of *N.J.S.A.* 18A:12-24.1(d)); or evidence

that Respondent took deliberate action which resulted in undermining, opposing, compromising or harming school personnel in the proper performance of their duties (as is required to establish a violation of *N.J.S.A.* 18A:12-24.1(i)). Respondent further argues that while Complainant's position on the hiring of an educational consultant was an important consideration, the final decision to hire the educational consultant rests with the BCSE Board of Trustees Board, not with Complainant.

As set forth above, 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. *N.J.A.C.* 6A:28-6.4(a)(1).

After 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). More specifically, despite being required by *N.J.A.C.* 6A:28-6.4(a)(1), the Commission finds that Complainant has not provided a **copy of a final decision(s)** from any court of law or other administrative agency demonstrating that Respondent and/or the BCSE Board of Trustees violated a specific statute (law), regulation, or policy when it hired an educational consultant without seeking his input or approval. Without such a final decision, and even if the allegations may be actionable in another forum, the Commission finds that there is insufficient credible evidence to support a finding that Respondent violated *N.J.S.A.* 18A:12-24.1(a). Furthermore, to the extent that Complainant seeks a determination from the Commission that Respondent and/or the BCSE Board of Trustees violated a statute (law), regulation, or policy when it failed to seek his input or approval, such a determination falls outside the scope, authority, and jurisdiction of the Commission. Therefore, the Commission finds that the alleged violation of *N.J.S.A.* 18A:12-24.1(a) in Count 2 should be dismissed.

Pursuant to *N.J.A.C.* 6A:28-6.4(a)(3), factual evidence of a violation of *N.J.S.A.* 18A:12-24.1(c) shall include evidence that Respondent took board action to effectuate policies and plans without consulting those affected by such policies and plans, or took action that was unrelated to Respondent's duty to (i) develop the general rules and principles that guide the management of the charter school; (ii) formulate the programs and methods to effectuate the goals of the charter school; or (iii) ascertain the value or liability of a policy.

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(c). There is nothing in the Complaint which indicates that *Respondent* took any action to effectuate policies and plans without consulting those affected by such policies and plans, or that *she* took action unrelated to her duties and responsibilities as a member and President of the BCSE Board of Trustees. Instead, Complainant takes issues with a decision that the entire BCSE Board of Trustees made, and not one that Respondent, and Respondent alone, made in a vacuum. As a result, the Commission finds that the alleged violation of *N.J.S.A.* 18A:12-24.1(c) in Count 2 should be dismissed.

As set forth in *N.J.A.C. 6A:28-6.4(a)(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 charter school.

After 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(d)*. Again, the crux of this allegation is Complainant's discontent with a decision made by the entire BCSE Board of Trustees, and not one which can solely be attributable to the actions of Respondent. Moreover, there are no facts in the Complaint indicating, or even insinuating, that Respondent alone gave a direct order to school personnel or became involved in the day-to-day administration of the school. Complainant's dispute is with the entire BCSE Board of Trustees, and not with any isolated or specific action taken by Respondent. Therefore, the Commission finds that the alleged violation of *N.J.S.A. 18A:12-24.1(d)* in Count 2 should be dismissed.

Pursuant to the regulation set forth above, 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. *N.J.A.C. 6A:28-6.4(a)(9)*.

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(i)*. Without any evidence that Respondent took a discrete action which, in and of itself, undermined, opposed, compromised, or harmed Complainant, a violation of *N.J.S.A. 18A:12-24.1(i)* cannot be found. It was the action and vote of the collective, not of Respondent, which Complainant finds objectionable. As a result, the Commission finds that the alleged violation of *N.J.S.A. 18A:12-24.1(i)* in Count 2 should be dismissed.

### ***Count 3***

In Count 3, Complainant contends that Respondent violated *N.J.S.A. 18A:12-24.1(a)* because, although the BCSE Board of Trustees approved Resolution 08130218, the BCSE Board of Trustees "failed to act on [the] Resolution." Respondent counters that the claims in Count 3 are false but, even if true, Complainant did not provide, refer, or cite to a final decision from a court of law or administrative agency 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.

As set forth above, 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. *N.J.A.C. 6A:28-6.4(a)(1)*.

After 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). Although required by *N.J.A.C.* 6A:28-6.4(a)(1), the Commission finds that Complainant has not provided a **copy of a final decision(s)** from any court of law or other administrative agency demonstrating that Respondent and/or the BCSE Board of Trustees violated a specific statute (law), regulation, or policy when it allegedly failed to act on the resolution which, according to Complainant, was approved by the BCSE Board of Trustees. Without such a final decision, and even if the allegations may be actionable in another forum, the Commission finds that there is insufficient credible evidence to support a finding that Respondent violated *N.J.S.A.* 18A:12-24.1(a). Moreover, to the extent that Complainant seeks a determination from the Commission that Respondent and/or the BCSE Board of Trustees violated a statute (law), regulation, or policy when it failed to enforce the terms of what Complainant believes was an approved resolution (a claim that Respondent denies), such a determination falls outside the scope, authority, and jurisdiction of the Commission. Therefore, the Commission finds that the alleged violation of *N.J.S.A.* 18A:12-24.1(a) in Count 3 should be dismissed.

Accordingly, and granting all inferences in favor of the non-moving party (Complainant), the Commission has determined to find that the allegations in Count 3 were timely filed but to, nonetheless, **grant** the Motion to Dismiss in its entirety because Complainant failed to plead sufficient, credible facts to support a finding that Respondent violated *N.J.S.A.* 18A:12-24.1(a) or *N.J.S.A.* 18A:12-24.1(i) as alleged in Count 1; violated *N.J.S.A.* 18A:12-24.1(a), *N.J.S.A.* 18A:12-24.1(c), *N.J.S.A.* 18A:12-24.1(d), or *N.J.S.A.* 18A:12-24.1(i) as argued in Count 2; and/or violated *N.J.S.A.* 18A:12-24.1(a) as contended in Count 3.

#### **IV. Request for Sanctions**

At its meeting on August 27, 2019, 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 September 24, 2019, 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 Count 3 were timely filed but to, nonetheless, **grant** the Motion to Dismiss in its entirety because Complainant failed to plead sufficient, credible facts to support a finding that Respondent violated *N.J.S.A.* 18A:12-24.1(a) or *N.J.S.A.* 18A:12-24.1(i) as alleged in Count 1; violated *N.J.S.A.* 18A:12-24.1(a), *N.J.S.A.* 18A:12-24.1(c), *N.J.S.A.* 18A:12-24.1(d), or *N.J.S.A.* 18A:12-24.1(i) as argued

in Count 2; and/or violated *N.J.S.A.* 18A:12-24.1(a) as contended in Count 3. 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).*

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Robert W. Bender, Chairperson

Mailing Date: September 25, 2019

**Resolution Adopting Decision  
in Connection with C33-19**

*Whereas*, at its meeting on August 27, 2019, 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 August 27, 2019, the Commission discussed finding that the allegations in Count 3 were timely filed but, nonetheless, granting the Motion to Dismiss in its entirety for failure to plead sufficient, credible facts to support the allegations that Respondent violated *N.J.S.A.* 18A:12-24.1(a) or *N.J.S.A.* 18A:12-24.1(i) as alleged in Count 1; violated *N.J.S.A.* 18A:12-24.1(a), *N.J.S.A.* 18A:12-24.1(c), *N.J.S.A.* 18A:12-24.1(d), or *N.J.S.A.* 18A:12-24.1(i) as argued in Count 2; and/or violated *N.J.S.A.* 18A:12-24.1(a) as contended in Count 3; and

*Whereas*, at its meeting on August 27, 2019, the Commission discussed finding the Complaint not frivolous, and denying Respondent's request for sanctions; and

*Whereas*, at its meeting on September 24, 2019, the Commission reviewed and voted to approve the within decision as accurately memorializing its actions/findings from its meeting on August 27, 2019; 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.

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Robert W. Bender, Chairperson

I hereby certify that the Resolution was duly adopted by the School Ethics Commission at its public meeting on September 24, 2019.

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Kathryn A. Whalen, Director  
School Ethics Commission