

Before the School Ethics Commission
Docket No.: C41-20
Decision on Motion to Dismiss

Verna Gray,
Complainant

v.

Paulo Dasilveira,
The Gray Charter School, Essex County,
Respondent

I. Procedural History

This matter arises from a Complaint that was filed on July 29, 2020, by Verna Gray (Complainant), the Executive Director/Principal and founder of The Gray Charter School (GCS), alleging that Paulo Dasilveira (Respondent), a member and President of the GCS Board of Trustees (Board), violated the School Ethics Act (Act), N.J.S.A. 18A:12-21 et seq. By correspondence dated July 31, 2020, Complainant was notified that the Complaint was deficient, and required amendment before the School Ethics Commission (Commission) could accept her filing. On August 25, 2020, 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. More specifically, the twelve count Complaint alleges that Respondent violated N.J.S.A. 18A:12-24.1(a) (Counts 1-11), N.J.S.A. 18A:12-24.1(d) (Counts 1–2, Count 8, Count 10, and Count 12), N.J.S.A. 18A:12-24.1(e) (Counts 1–5, Counts 7–8, and Count 12), and N.J.S.A. 18A:12-24.1(i) (Counts 1–2, Counts 5–6, and Count 11) of the Code of Ethics for School Board Members (Code).

On August 27, 2020, the Complaint was served on Respondent, via electronic mail, notifying him that charges were filed against him with the Commission, and advising that he had twenty (20) days to file a responsive pleading.¹ On October 12, 2020, Respondent filed a Motion to Dismiss in Lieu of Answer (Motion to Dismiss), and on October 30, 2020, Complainant filed a response to the Motion to Dismiss.²

The parties were notified by correspondence dated November 16, 2020, that this matter would be placed on the Commission’s agenda for its meeting on November 24, 2020, in order to

¹ Due to the ongoing Coronavirus (COVID-19) pandemic, service of process was effectuated by the Commission through electronic transmission only.

² On November 6, 2020, Respondent filed a brief reply to Complainant’s response to the Motion to Dismiss. As this reply is not permitted by the Commission’s regulations, it was not considered by the Commission at its meetings on November 24, 2020, and/or December 22, 2020, in ruling on the Motion to Dismiss.

make a determination regarding the Motion to Dismiss. At its meeting on November 24, 2020, the Commission considered the filings in this matter and, at its meeting on December 22, 2020, the Commission voted to find that the allegations in the Complaint were timely filed, but to 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) as alleged in Counts 1–11; violated *N.J.S.A.* 18A:12-24.1(d) as asserted in Counts 1–2, Count 8, Count 10, and Count 12; violated *N.J.S.A.* 18A:12-24.1(e) as contended in Counts 1–5, Counts 7–8, and Count 12; and/or violated *N.J.S.A.* 18A:12-24.1(i) as argued in Counts 1–2, Counts 5–6, and Count 11.

II. Summary of the Pleadings

A. The Complaint

In Count 1, Complainant, the Executive Director/Principal and founder of the GCS, states that during the January 13, 2020, Board meeting, Respondent (the Board President) “improperly removed the school’s assistant director from executive session.” Once the administrator left, Respondent “had inappropriate conversations about 2 employees” although neither had received a *Rice* notice, and “took inappropriate [B]oard action during close[d] executive session.” After Respondent’s actions were referred to Board counsel, Board counsel indicated, in correspondence dated January 23, 2020, that Respondent’s “actions regarding any discussion about specific GSC staff” without prior issuance of *Rice* notices was improper, and also “pointed out that the [B]oard improperly took closed votes on 3 items during the executive session.” Despite receipt of Board counsel’s correspondence about issuance of *Rice* notices, Respondent continued to improperly discuss staff members when he “continued to make derogatory and inflammatory statements regarding one or both employees” at subsequent meetings (February 10, 2020, March 9, 2020, and April 20, 2020). When Complainant advised Respondent that “not only was what he was saying incorrect, but also that the discussion was improper,” Respondent responded, “you don’t vote.” Based on these facts, Complainant alleges that Respondent violated *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), and *N.J.S.A.* 18A:12-24.1(i).

In Count 2, Complainant states that, after Board counsel sent correspondence to Respondent regarding his (Respondent’s) improper actions at the January 13, 2020, Board meeting, Respondent had a meeting with Board counsel (on or about March 17, 2020) “without the knowledge and consent of the full [B]oard,” and attempted to get Board counsel to “change his position that the administration had a right to be at all [B]oard meetings and to rescind his letter indicating such.” Complainant maintains that the Board attorney refused Respondent’s request, and Respondent stated, “he would just have the administration sit silently and not participate in the meetings.” Complainant further states that Respondent informed the Board attorney “he was going to transfer or reassign staff,” and the Board attorney “warned [Respondent] that doing so could be a direct ethics violation and advised against it.” Complainant notes that after the Board attorney refused Respondent’s request (about the presence of administration), the Board “began to have secretive meetings on Saturday without invitation or input from administration.” Complainant further states, “As retaliation for the attorney’s perceived lack of support,” Respondent “began delaying the attorney’s payments and moved [not to] renew his contract without open discussion.” Based on these facts, Complainant

contends that Respondent violated *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), and *N.J.S.A.* 18A:12-24.1(i).

In Count 3, Complainant states that she invited Board counsel to the Board meeting on February 10, 2020, “to explain the contents of his January 23, 2020[,] letter to the [B]oard.” According to Complainant, Respondent “dismissed” Board counsel “from the meeting without hearing him,” although he “had a right to attend the meeting as a member of the public.” After Board counsel was dismissed, Respondent again attempted to dismiss “both of the school’s administrators and move into a closed executive session, which was in direct conflict of the recommendation of” Board counsel. When both administrators “refused to leave,” Respondent “attempted to move the meeting to another room,” but the Board members “refused to leave.” Based on these facts, Complainant asserts Respondent violated *N.J.S.A.* 18A:12-24.1(a) and *N.J.S.A.* 18A:12-24.1(e).

In Count 4, Complainant states that, “while acting as the [B]oard [P]resident, [Respondent] [began] a series of activities to manipulate the composition of the school’s [B]oard of [T]rustees in an effort to take control of [B]oard operations.” Namely, Respondent “dismissed several qualified candidates to fill [B]oard vacancies,” adopted a “policy that only parents are able to sit on the [Board],” and “pushed [B]oard appointments from the agenda in order to prevent seats from being filled by independent minded candidates.” In addition, Respondent “constantly badgered the other [B]oard members” from February 10, 2020, through July 13, 2020, until the Board finally acquiesced and agreed to vote for two of his friends to fill seats on the Board. According to Complainant, although these people occupy seats, they “do not function independently.” Based on these facts, Complainant alleges Respondent violated *N.J.S.A.* 18A:12-24.1(a) and *N.J.S.A.* 18A:12-24.1(e).

In Count 5, Complainant asserts that from April 18, 2020, through the present, Respondent has been conducting “secretive work session[s]” without inviting the administration, and discussing employees without providing them (employees) with *Rice* Notices or otherwise having the recommendation of the administration to do so. Based on these facts, Complainant asserts Respondent violated *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(i).

In Count 6, Complainant states that during an “executive committee meeting” on May 6, 2020, Respondent “ordered” the administration to “issue improper, what he termed as blanket *Rice* Notices[,]” to all employees so that the Board could discuss “any employee at any time.” The administration “firmly objected” and advised Respondent his request was “illegal and improper.” Despite the administration’s objection, Respondent was “insistent that the *Rice* notices be issued as he directed.” Ultimately, the administrators “refused to follow the directive as it is a violation of [l]aw and employee due process.” Based on these facts, Complainant contends that Respondent violated *N.J.S.A.* 18A:12-24.1(a) and *N.J.S.A.* 18A:12-24.1(i).

In Count 7, Complainant states that Respondent “is guiding the [B]oard in entering into financial contracts and agreements without the proper vetting and recommendation of the Lead Person” of the GCS, and “has directed” the Board and the Board Secretary (BS) “to seek bids for services and award contracts to vendors “without the knowledge, advice or recommendation of

the Lead Person.” Based on these facts, Complainant asserts Respondent violated *N.J.S.A.* 18A:12-24.1(a) and *N.J.S.A.* 18A:12-24.1(e).

In Count 8, Complainant contends that beginning June 8, 2020, through the present, Respondent has been “directly interfering in the administration of the school” because he “has hindered” Complainant’s ability to hire “the necessary professional development facilitator” to deliver, coach, and mentor teaching staff. Instead, Respondent told Complainant to “redeploy classroom teachers” who are able to “train, coach and mentor new teachers.” When Complainant asked who would cover “the more veteran teachers when they were out of the classroom, [Respondent] indicated that was not his concern.” Based on these facts, Complainant alleges Respondent violated (and continues to violate) *N.J.S.A.* 18A:12-24.1(a), *N.J.S.A.* 18A:12-24.1(d), and *N.J.S.A.* 18A:12-24.1(e).

In Count 9, Complainant states that the “Board’s former attorney” contacted her on July 6, 2020, to discuss correspondence he received from the Board’s “new counsel.” According to Complainant, the new counsel was approved at the Board meeting on June 8, 2020, “without any discussion.” Based on these facts, Complainant asserts Respondent violated *N.J.S.A.* 18A:12-24.1(a).

In Count 10, Complainant states that Respondent “recently supervised the hiring of an outside cleaning contractor, without the input, vetting or recommendation of” the administration. In addition, Complainant notes that she “secured donations from several sources” and wanted to establish a separate bank account that would link to PayPal so the individuals could donate the money using “credit card and other means.” According to Complainant, Respondent “refused to cooperate in setting up the account” and he is jeopardizing the receipt of the donations. Based on these facts, Complainant contends Respondent’s refusal and lack of cooperation with securing funds for donations violates *N.J.S.A.* 18A:12-24.1(a) and *N.J.S.A.* 18A:12-24.1(d).

In Count 11, Complainant states that during the February and August 2020, Board meetings, Respondent “verbally attacked and criticized [Complainant] in public and during an open forum.” Based on these facts, Complainant asserts Respondent violated *N.J.S.A.* 18A:12-24.1(a) and *N.J.S.A.* 18A:12-24.1(i).

In Count 12, Complainant asserts that on August 14, 2020, Respondent sent an email to Complainant “direct[ing] [her] to send” a letter to GCS parents and to post notices outside of the school regarding the “reopening after the COVID-19 school closure.” Based on these facts, Complainant alleges Respondent violated *N.J.S.A.* 18A:12-24.1(d) and *N.J.S.A.* 18A:12-24.1(e).

B. Motion to Dismiss

Following receipt of the Complaint, Respondent filed a Motion to Dismiss and initially argues that “many of” Complainant’s allegations are untimely because they occurred approximately eight (8) months ago. To the extent they are not untimely, the allegations are “specious in nature,” and the Complaint “fails to set forth sufficient factual evidence which, if proven true, could support a finding” that Respondent violated *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), and/or *N.J.S.A.* 18A:12-24.1(i).

As to Count 1, Respondent argues that the allegations related to actions that took place at the January 13, 2020, and February 10, 2020, Board meetings “are outside of the of the 180 day statute of limitations.” In addition, Complainant was not present at the January 13, 2020, Board meeting, and the January 23, 2020, correspondence “claimed that the Board – not [Respondent]” was involved in “improper” actions during the January 13, 2020, meeting. As to the “derogatory” comments that Respondent made to/about two school employees at multiple meetings, Complainant did not provide “specific allegations” indicating what Respondent said or how his statements were inappropriate. In addition, Complainant has not provided a copy of a final decision to prove a violation of *N.J.S.A. 18A:12-24.1(a)*; has not provided evidence to demonstrate any “impropriety or any conduct” that Respondent participated in that was “an independent act which inserted him into the day-to-day functions of school administration” to support a violation of *N.J.S.A. 18A:12-24.1(d)*; has not identified a specific action that Respondent took that was beyond the scope of his duties nor any action that could have compromised the Board in violation of *N.J.S.A. 18A:12-24.1(e)*; and has not provided any evidence to support that Respondent “undermined or opposed school personnel in the proper performance of their duties in violation of *N.J.S.A. 18A:12-24.1(i)*. Furthermore, Complainant’s allegation that Respondent told her “you don’t vote,” is part of the Board’s Bylaws, and although Respondent is not “asking the Commission to review or opine on the cited Bylaw,” Complainant’s assertion that Respondent’s statement violated Code “is hollow” and does not demonstrate that Respondent “undermined or harmed” Complainant. Therefore, the allegations in Count 1 should be dismissed for “untimeliness and/or” for Complainant’s “failure to provide ... detail or specificity as to the underlying allegations.”

Regarding Count 2, Complainant did not provide any information about “how she became aware of the alleged conversation” between Respondent and former Board counsel; whether the former Board counsel informed the Board of the conversation; and whether former Board counsel informed the administration or the Board that the conversation compromised the Board. Respondent further argues that even if he did have such a conversation, it was not prohibited by the Act; moreover, even if it did violate the Act, former Board counsel would have been “duty-bound” to report the conversation to the Board. As to the alleged “secret meetings” referenced by Complainant, she did not provide the specific dates of any such meetings, how many meetings occurred, nor who was present at the meetings. Moreover, Complainant’s assertions do not indicate whether “these purported gatherings would even qualify as a ‘meeting per’ the Open Public Meetings Act (OPMA). Furthermore, Complainant, once again, did not provide a copy of a final decision from any court, and has not “provided [a] plausible explanation as to what changes [] Respondent brought about through illegal or unethical procedures” to support a violation of *N.J.S.A. 18A:12-24.1(a)*; has not provided any evidence to support that Respondent “gave a direct order to school personnel or became directly involved in activities or functions that are the responsibility” of others; has not provided any evidence to support that Respondent began “delaying payments” to the former Board counsel; and has not demonstrated how Respondent inserted “himself into the day-to-day functions of school administration” or gave direct orders to school personnel in order to support a violation of *N.J.S.A. 18A:12-24.1(d)*. Complainant also has not indicated which Board meeting Respondent “allegedly ‘moved [not to] renew [counsels’] contract without open discussion.” Respondent maintains that the Board voted “unanimously” to approve new legal counsel and Complainant has not provided any evidence to support that Respondent made personal promises or took action beyond the scope of his duties ... in violation of *N.J.S.A. 18A:12-24.1(e)*, and has not provided

any evidence to support that Respondent’s “alleged conversation” with former Board counsel “opposed” Complainant or “any other school personnel in the proper performance of their duties to support a violation of *N.J.S.A.* 18A:12-24.1(i). As such, Respondent asserts that Count 2 “must be dismissed” because Complainant failed “to provide the Commission with detail or specificity as to the underlying allegations and the required factual evidence to support the alleged violations”

As to Count 3, Complainant’s assertions regarding Respondent’s actions that occurred at the February 10, 2020, Board meeting “would have taken place over 191 days prior to the filing of the Complaint” and, therefore, “are out of time and must be dismissed.”

Regarding Count 4, Respondent maintains that Complainant “laments the appointment of two (2) individuals to the Board, whom Complainant suggests are friends of [Respondent].” According to Respondent, at the February 10, 2020, Board meeting, Complainant objected to one individual “because she did not feel that she was a good candidate for board appointment” and the appointment was postponed. However, in addition to being out of time, Complainant did not provide any evidence to support that Respondent violated the Act. According to Respondent, Complainant claims that Respondent’s “two friends” were “presented to the Board for consideration, during the March 9, 2020, Board meeting, but Respondent notes this does not violate the Act, nor does the fact that the “quorum was lost” or that the appointment of the “two friends” was tabled. Respondent further maintains that Complainant again has failed to attach a final decision to support a violation of *N.J.S.A.* 18A:12-24.1(a), and Complainant has failed to “allege what personal promises” Respondent made from “February 10, 2020 through ‘ongoing.’” Respondent further notes that Complainant did not provide any evidence to support how Respondent “continued to bring these two friends to the meeting and constantly badgered the other board members” Furthermore, Complainant’s assertions that “these people ‘now occupy board seats and that they do not’ function independently,” does not support a violation of the Code. Respondent also argues that Complainant has not provided any evidence to support that “another [B]oard member or [administrator] advised [Respondent] that his actions were improper.” Therefore, the allegations in Count 4 “must be dismissed” because Complainant failed to provide “detail or specificity” to support a violation of *N.J.S.A.* 18A:12-24.1(a) or *N.J.S.A.* 18A:12-24.1(e).

As to Count 5, and the “secretive work sessions,” Complainant’s assertions are “vague” and do not provide the necessary evidence to support a violation of the Code. Complainant also did not demonstrate how Respondent acted in his official capacity during these meetings. Therefore, Respondent maintains that the allegations “must be dismissed” because Complainant failed to provide “detail or specificity” to support a violation of *N.J.S.A.* 18A:12-24.1(a), *N.J.S.A.* 18A:12-24.1(e), and/or *N.J.S.A.* 18A:12-24.1(i).

Regarding Count 6, Respondent argues that Complainant has not provided a final decision from any court of law to support a violation of *N.J.S.A.* 18A:12-24.1(a). In addition, Respondent argues that his intention was not to present *Rice* Notices to employees, but rather to provide them with a “Furlough Clause,” and Respondent “clearly evidences a confusion about the terminology.” After an email exchange among Respondent, another Board member, and the Assistant Director of the GCS, the Assistant Director “explained the proper process by which to discuss a staff member’s contract,” and it was agreed that the *Rice* Notice was not the

appropriate action. Respondent further argues that Complainant did not demonstrate that Respondent “took deliberate action which resulted in undermining, opposing, compromising or harming school personnel in the proper performance of their duties,” nor how the “miscommunication, which was later rectified” and “did not involve” Complainant, “undermined” the Assistant Director’s “proper performance of his duties.” Therefore, the allegations in Count 6, “must be dismissed” because they “are not supported by the required factual evidence.”

As to Counts 7 and 9, Respondent maintains that Complainant has failed to provide a final decision from any court of law ... to support a violation of *N.J.S.A. 18A:12-24.1(a)*. Furthermore, Complainant has not demonstrated how the “Board’s proper approval to renew, award or permit to expire vendor contracts through the passage of a Resolution was” illegal or unethical. According to Respondent, simply because Complainant was not aware of the Resolution does not mean that Respondent failed to “uphold or enforce any laws ... pertaining to schools.” Regarding the violation of *N.J.S.A. 18A:12-24.1(e)* in Count 7, Complainant did not provide any evidence to support “what personal promises” Respondent made “(or to whom)”, nor any private action that he took that compromised the Board on June 8, 2020. Respondent argues that the Commission “should not accept” Complainant’s “continued reference” to ongoing” violations when Complainant did not identify “any specific conduct on any other specific date of occurrence,” because the allegations are “unsupported and prejudicial.” Therefore, Respondent contends that the allegations in Count 7 and Count 9 “must be dismissed.”

Regarding Count 8, Respondent again notes that Complainant did not provide a final decision ... to support a violation of *N.J.S.A. 18A:12-24.1(a)*. Respondent argues that Complainant has “failed to demonstrate” how the “exchange” between him and Complainant “was a direct order” from Respondent to her, nor has Complainant provided evidence to show “how” Respondent “hindered” Complainant’s hiring ability or how his “purported comment interfered in the administration of the school” in violation of *N.J.S.A. 18A:12-24.1(d)*. Respondent further argues that Complainant has “not alleged what personal promises” Respondent made or “what actions he took that had the potential to compromise the Board.” According to Respondent, Complainant did not provide “any context” to his alleged statement – “redeploy the classroom teachers” – and has not “evidenced how this statement specifically compromised the Board.” Therefore, Respondent asserts Count 8 “must be dismissed.”

As to Count 10, Complainant has failed to provide a final decision ... to support a violation of *N.J.S.A. 18A:12-24.1(a)*. Furthermore, Complainant has not demonstrated how Respondent’s “alleged refusal to individually approve, and presumably without Board authority, [] Complainant’s” ability to open an account was illegal or unethical. Respondent contends that the Board, not Respondent “is responsible for the fiscal control of and system of accounting” for the school. Therefore, Respondent asserts that Complainant did not provide any evidence to support a violation of *N.J.S.A. 18A:12-24.1(d)*.

Respondent contends that Count 11 “must also be dismissed” because, once again, Complainant has failed to provide a final decision ... to support a violation of *N.J.S.A. 18A:12-24.1(a)*. Furthermore, Complainant did not provide any evidence to support that Respondent “verbally attacked or criticized” her. According to Respondent, the minutes from the August 10,

2020, Board meeting do not indicate that Respondent made any negative statements to or about Complainant. Therefore, Complainant did not provide any evidence to support that Respondent took action, which resulted in undermining school personnel, and “must be dismissed” “for failure to provide “detail or specificity” to support a violation of *N.J.S.A.* 18A:12-24.1(a) or *N.J.S.A.* 18A:12-24.1(i).

Regarding Count 12, Respondent notes, “As the email indicates,” Respondent contacted Complainant and requested that she “ensure that by Friday, August 14th, large signs were posted on the doors ... notifying of this critical update.” Respondent argues that he did not “order Complainant to do anything, rather request that she ensure” the students’ families were aware of the new reopening plan. According to Respondent, he “acknowledged his role as a parent” when he sent the email, and Complainant has not provided any evidence to demonstrate “how his action” compromised the Board and “was not in line with the Board’s Resolution of August 10th regarding virtual instruction.” Therefore, Respondent asserts Count 12 “must be dismissed” for “failure to provide” sufficient factual evidence.

Based on the above, Respondent “respectfully requests” that the Commission dismiss the Complaint for “failure to state a claim upon which relief can be granted.”

C. Response to Motion to Dismiss

In her response to the Motion to Dismiss, Complainant reiterates that Respondent has “exhibited a months-long pattern of repeated violations of [OPMA], complete disregard for providing *Rice* Notices as required, habitual intermeddling in school administration, manipulation of Board membership, and improper awarding of contracts.” Complainant further reiterates that even after Respondent was advised by former Board counsel that his actions were in violation of the Act, he “refused to correct his behavior,” fired Board counsel and continued “his pattern of brazen unlawful conduct.” Instead of responding to Complainant’s allegations, Respondent “attempts to muddy the waters” by “evad[ing]” “answering the allegations ... through boilerplate demands for more specificity or evidence.” Complainant asserts that the Motion to Dismiss should be denied.

As to Respondent’s argument that the events that occurred on January 13, 2020, and February 10, 2020, are time barred, Complainant argues, “Respondent is incorrect because the Commission must deem part of that time period tolled during the COVID-19 public health crisis” and “must also be tolled under traditional continuing wrong principles.”

Complainant reaffirms that the Complaint “is full of detail” and she has provided “the character and dates of Respondent’s alleged misconduct, including quoted statements and specific actions.” Complainant notes, “There is no question that Respondent has been provided with adequate notice of the allegations against him so as to enable him to prepare a defense.” As to Count 1, and Respondent’s argument that Complainant had not provided evidence, Complainant argues that Respondent is “premature in his demand for ‘evidence’ [and] confuses pleading standards with proof standards.”

Regarding Count 2, Complainant argues, “the picayune gaps in the allegations” and Complainant’s alleged lack of “evidence” during the “pleading stage” does not warrant a dismissal of the Complaint.

As to Count 4, Complainant reiterates that she provided “‘factual evidence’ or more” to support that Respondent “manipulated not only the eligibility criteria but also meeting agendas in order to evade proper votes on candidates other than the individuals that he personally preferred.” Complainant further reiterates that the Complaint “details how Board members were improperly harassed and ‘badgered’ by Respondent until they approved his candidates, a process that circumvented and undermined proper process at the expense of the [s]chool.”

Regarding Count 5, Complainant notes that “again” Respondent’s demands for “factual evidence” is misplaced.

As to Count 6, Complainant maintains that Respondent “oversimplifies the allegations as mere ‘miscommunication’”; however, his “attempt to conflate this allegation of overarching improper conduct with broad effect as an allegation of but one instance of impropriety is misleading and unavailing” and “should be rejected.”

Regarding Counts 7, 8, and 9, Complainant again reaffirms that Respondent “has directed the [BS] to seek bids for services and award contracts to vendors without the knowledge, advice or recommendation of the Lead Person.” As such, he has interfered in the administration of the school, and his “demand for ‘evidence’ at this stage is premature.”

As to Count 10, Complainant argues that Respondent’s argument that he “cannot possibly have violated the law in some instances through affirmative acts while also violating the law in other instances by failing to act,” is a “false dichotomy,” and Complainant’s “allegations of unlawful affirmative acts and unlawful failures to act do not concern the same issues or conduct.” Furthermore, Respondent “blurs” the allegation that he would not cooperate with Complainant regarding the setting up of an account with a “demand” that Complainant wanted Respondent to act unilaterally.

Regarding Count 11, Complainant reaffirms that she provided the dates of the “alleged abuse” and Respondent’s contentions that this Count should be dismissed is “entirely without legal basis” and “is not grounds for dismissal.” Complainant argues, “it is wholly unremarkable that the meeting minutes (not a transcript) do not record verbatim exactly what was said to” Complainant.

Finally, as to Count 12, Complainant notes that she never mentioned the word “order” in her Complaint, and Respondent’s “semantics” do not alter the fact that Respondent “demand[ed]” that Complainant “take specific action on day-to-day matters” and, therefore, Respondent’s “argument should be rejected.”

For the foregoing reasons, Complainant “respectfully submits” that the Commission “should deny Respondent’s Motion to Dismiss in its entirety.”

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) as alleged in Counts 1–11; violated *N.J.S.A.* 18A:12-24.1(d) as asserted in Counts 1–2, Count 8, Count 10, and Count 12; violated *N.J.S.A.* 18A:12-24.1(e) as contended in Counts 1-5, Counts 7–8, and Count 12; and/or violated *N.J.S.A.* 18A:12-24.1(i) as argued in Counts 1–2, Counts 5-6, and Count 11.

B. Alleged Untimeliness

In his Motion to Dismiss, Respondent argues that certain allegations in the Complaint, namely those that reference alleged wrongdoing on January 13, 2020, and February 10, 2020 (i.e., Counts 1-4), are untimely and should be dismissed. Complainant counters, “Respondent is incorrect because the Commission must deem part of that time period tolled during the COVID-19 public health crisis” and “must also be tolled under traditional continuing wrong principles.”

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 August 25, 2020, she filed her first deficient Complaint on July 29, 2020; 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 **July 29, 2020**. 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 her Complaint, or when such events were made public so that one using reasonable diligence would know, or should have known, of such events. In its review of the pleadings, the Commission finds that Complainant has not argued, or indicated, that she did not have reason to know of the events that form the basis of her Complaint on a date/day other than when they originally occurred. Therefore, the Commission determines that Complainant knew of the events that form the basis of her Complaint on the date/day they occurred.

Because Complainant filed her first deficient Complaint on July 29, 2020, one hundred eighty (180) days prior thereto would be **January 31, 2020**. The only date referenced in the Complaint which precedes January 31, 2020, is January 13, 2020, and that was the date of a Board meeting at which Respondent allegedly engaged in multiple acts of misconduct, and caused Board counsel to issue correspondence to Respondent. Based on its review, and because the actions that occurred on January 13, 2020, are used as a basis for Complainant to assert continuing violations of the Code on dates which occurred well after January 31, 2020, the Commission finds, in construing the facts in the light most favorable to Complainant, that the allegations in the Complaint were timely filed.

C. Alleged Code Violations

In her multi-Count Complaint, Complainant alleges that Respondent violated *N.J.S.A.* 18A:12-24.1(a) in Counts 1-11; violated *N.J.S.A.* 18A:12-24.1(d) in Counts 1-2, Count 8, Count 10, and Count 12; violated *N.J.S.A.* 18A:12-24.1(e) in Counts 1-5, Counts 7-8, and Count 12; and violated *N.J.S.A.* 18A:12-24.1(i) in Counts 1-2, Counts 5-6, and Count 11. 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.
- i. I will support and protect school personnel in proper performance of their duties.

Count 1

Complainant alleges that, in violation 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)*, and *N.J.S.A. 18A:12-24.1(i)*, Respondent “improperly removed the school’s assistant director from executive session”; after the administrator left, Respondent “had inappropriate conversations about 2 employees” although neither had received a *Rice* notice, and also “took inappropriate [B]oard action during close[d] executive session”; and, despite receipt of correspondence from Board counsel advising that discussion of employees without prior issuance of *Rice* notices was improper, Respondent continued to improperly discuss staff members by making “derogatory and inflammatory statements regarding one or both employees” at least three meetings thereafter.

Respondent counters that the correspondence referenced by Complainant “claimed that the Board – not [Respondent]” was involved in “improper” actions during the January 13, 2020, meeting; Complainant did not provide “specific allegations” indicating what Respondent said or how his statements were inappropriate; Complainant has not provided a copy of a final decision necessary to prove a violation of *N.J.S.A. 18A:12-24.1(a)*; has not provided evidence to demonstrate any “impropriety or any conduct” that Respondent participated in that was “an independent act which inserted him into the day-to-day functions of school administration” to support a violation of *N.J.S.A. 18A:12-24.1(d)*; has not identified a specific action that Respondent took that was beyond the scope of his duties nor any action that could have compromised the Board in violation of *N.J.S.A. 18A:12-24.1(e)*; and has not provided any evidence to support that Respondent “undermined or opposed school personnel in the proper performance of their duties in violation of *N.J.S.A. 18A:12-24.1(i)*.”

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)*. Although required by *N.J.A.C. 6A:28-6.4(a)(1)*, Complainant did not provide a **copy of a final decision(s)** from any court of law or other administrative agency demonstrating that Respondent violated a specific law, rule, or regulation when he engaged in any of the actions complained of in this Count. Absent such a final decision, and even if the accusations may be actionable in another forum, 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)(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.

Based on its review of the Complaint, the Commission additionally 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)*. First, Complainant has not offered any facts evidencing a “direct order” to any school personnel. Second, even if the discussion of the at-issue employees that occurred in executive session violated OPMA, an issue that is outside the jurisdiction of the Commission to adjudicate, discussion of employees falls within the responsibility of the Board. As a result, and without a finding that *the Board* violated OPMA when it discussed these employees in executive session, the Commission finds that the alleged violation of *N.J.S.A. 18A:12-24.1(d)* in Count 1 should be dismissed.

As set forth in *N.J.A.C. 6A:28-6.4(a)(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 his duties such that, by its nature, had the potential to compromise the board.

After review of the Complaint, the Commission further 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(e)*. Complainant does not indicate that Respondent made a personal promise to anyone (or indicate the nature of any alleged promise), and also does not clarify what “action” Respondent took which exceeded the scope of his duties that had the potential to compromise the Board. Although the Commission finds that the failure to issue a *Rice* notice to an employee prior to discussing his/her employment is inappropriate and violates OPMA, it does not have jurisdiction to determine whether prior issuance was required in the circumstances present here. Absent a decision indicating that *the Board* was required, but failed to issue a *Rice* notice, the Commission finds that the alleged violation of *N.J.S.A. 18A:12-24.1(e)* 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 also 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)*. Other than claiming that Respondent had purported “inappropriate” conversations about two unidentified employees, and that he made non-specific “derogatory and inflammatory” statements about one or both of these same unidentified employees, Complainant failed to articulate specific factual support for her argument that Respondent took deliberate “action” which resulted in undermining, opposing, compromising, or harming school personnel. Although the Commission agrees that the failure to issue a *Rice* notice to an employee prior to discussing his/her employment is procedurally improper and violates OPMA, the Commission does not have jurisdiction to establish whether *the Board* was required to issue a *Rice* notice in this case. Without the benefit of such a determination, 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

Complainant argues that Respondent violated *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)*, and *N.J.S.A. 18A:12-24.1(i)* because Respondent had a meeting with Board counsel “without the knowledge and consent of the full [B]oard”; Respondent attempted to get Board counsel to “change his position that the administration had a right to be at all [B]oard meetings and to rescind his letter indicating such”; after the Board attorney refused to change his position regarding the right of administrators to be present at meetings, the Board “began to have secretive meetings on Saturday without invitation or input from administration”; and in “retaliation for the attorney’s perceived lack of support,” Respondent “began delaying the attorney’s payments and moved [not to] renew his contract without open discussion.”

Respondent maintains that Complainant did not provide any information about “how she became aware of the alleged conversation” between Respondent and former Board counsel; even if he had such a conversation, it was not prohibited by the Act; Complainant did not provide the specific dates of any alleged “secret” meetings, how many meetings occurred, who was present at the meetings, and whether “these purported gatherings would even qualify as a ‘meeting’ per” OPMA; Complainant did not provide a copy of a final decision from any court; Complainant has not “provided [a] plausible explanation as to what changes [] Respondent brought about through illegal or unethical procedures”; has not provided any evidence to support that Respondent “gave a direct order to school personnel or became directly involved in activities or functions that are the responsibility of others; has not provided any evidence to support that Respondent began “delaying payments” to the former Board counsel; has not demonstrated how Respondent inserted “himself into the day-to-day functions of school administration,” or gave direct orders to school personnel; has not indicated which Board meeting Respondent “allegedly ‘moved [not to] renew [counsel’s] contract without open discussion”; has not provided any evidence to support that Respondent made personal promises or took action beyond the scope of his duties; and has not provided any evidence to support the position that Respondent’s “alleged conversation” with former Board counsel “opposed” Complainant or “any other school personnel in the proper performance of their duties.

After review of the Complaint, and with Complainant’s burden of proof in mind, 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)*. Even though required by *N.J.A.C. 6A:28-6.4(a)(1)*, Complainant did not provide **a copy of a final decision(s)** from any court of law or other administrative agency demonstrating that Respondent violated a specific law, rule, or regulation when he engaged in any of the conduct complained of in this Count. Without such a final decision, and even if the accusations may be actionable in another forum, the Commission finds that the alleged violation of *N.J.S.A. 18A:12-24.1(a)* in Count 2 should be dismissed.

Based on its review of the Complaint, as well as Complainant’s burden of proof for establishing a violation of *N.J.S.A. 18A:12-24.1(d)*, the Commission additionally 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)*. Complainant has not cited to a specific “direct order” given by Respondent to any school personnel, and has not provided any

factual support for a position that Respondent became directly involved in activities or functions that are the responsibility of other school personnel, or that he became directly involved in the administration of the school. There is nothing that prohibits Respondent from meeting with Board counsel, and nothing that requires him (Respondent) to vote to renew his/her professional services contract. The Complaint is also devoid of sufficient factual support for alleged secretive meetings. As a result, the Commission finds that the alleged violation of *N.J.S.A. 18A:12-24.1(d)* in Count 2 should be dismissed.

After review of the Complaint, and with Complainant's burden of proof in mind, the Commission further 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(e)*. Complainant has not identified any personal promise that Respondent made (or to whom it was made), and has not indicated the action that he engaged in which exceeded the scope of his duties and had the potential to compromise the Board. As noted above, there is nothing that prohibits Respondent from meeting with Board counsel, and nothing that requires him (Respondent) to vote to renew his/her professional services contract. There is also no factual support for the occurrence of any secretive meeting. Therefore, the Commission finds that the alleged violation of *N.J.S.A. 18A:12-24.1(e)* in Count 2 should be dismissed.

Based on its review of the Complaint, as well as Complainant's burden of proof for establishing a violation of *N.J.S.A. 18A:12-24.1(i)*, the Commission also 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)*. Complainant has failed to provide specific factual allegations evidencing deliberate action, which undermined, opposed, or harmed specific school personnel. In this context, Board counsel is not "school personnel," but rather a vendor/contractor to the Board. 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

Complainant contends that Respondent violated *N.J.S.A. 18A:12-24.1(a)* and *N.J.S.A. 18A:12-24.1(e)* because he "dismissed" Board counsel from a regular Board meeting without hearing him, although he "had a right to attend the meeting as a member of the public." In addition, after Board counsel was dismissed, Respondent again attempted to dismiss "both of the school's administrators and move into a closed executive session, which was in direct conflict of the recommendation of" Board counsel.

Respondent submits that the actions complained of occurred at the February 10, 2020, Board meeting and, as such, "would have taken place over 191 days prior to the filing of the Complaint." Therefore, Respondent argues these claims "are out of time and must be dismissed."

After review of the Complaint, and with Complainant's burden of proof in mind, 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)*. Despite being required by *N.J.A.C. 6A:28-6.4(a)(1)*, Complainant did not provide **a copy of a final decision(s)** from any court of law or other administrative agency demonstrating that Respondent violated a specific law, rule, or regulation when he engaged in any of the actions complained of

in this Count. In the absence of such a final decision, and even if the accusations may be actionable in another forum, the Commission finds that the alleged violation of *N.J.S.A. 18A:12-24.1(a)* in Count 3 should be dismissed.

Based on its review of the Complaint, as well as Complainant's burden of proof for establishing a violation of *N.J.S.A. 18A:12-24.1(e)*, the Commission additionally 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(e)*. Complainant has not articulated sufficient facts to explain how Respondent's alleged dismissal of Board counsel from a regular Board meeting exceeded the scope of his (Respondent's) duties and had the potential to compromise the Board. While Board counsel is free to attend a public meeting (as is any other member of the public), whether Board counsel serves in an official capacity and provides legal advice to the body is not a "right" afforded to Board counsel – the extent to which counsel provides legal advice and services can be limited. Moreover, the fact that Respondent *attempted* to dismiss the Board's administrators in contravention of Board counsel's advice does not mean he took action beyond the scope of his duties, only that he disregarded counsel's advice. As a result, the Commission finds that the alleged violation of *N.J.S.A. 18A:12-24.1(e)* in Count 3 should be dismissed.

Count 4

Complainant asserts that, in violation of *N.J.S.A. 18A:12-24.1(a)* and *N.J.S.A. 18A:12-24.1(e)*, Respondent, "while acting as the [B]oard [P]resident, [he] [began] a series of activities to manipulate the composition of the school's [B]oard of [T]rustees in an effort to take control of [B]oard operations." Not only did Respondent dismiss "several qualified candidates to fill [B]oard vacancies," he also adopted a "policy that only parents are able to sit on the [Board]," and "pushed [B]oard appointments from the agenda in order to prevent seats from being filled by independent minded candidates." Furthermore, Respondent "constantly badgered the other [B]oard members" from February 10, 2020, through July 13, 2020, until the Board finally acquiesced and agreed to vote for two of his friends to fill seats on the Board.

Respondent counters that the claims in this Count are time barred, and even if not time barred, Complainant did not provide any evidence to support that Respondent violated the Act. Not only did Complainant fail to attach a final decision to support a violation of *N.J.S.A. 18A:12-24.1(a)*, Complainant also failed to "allege what personal promises" Respondent made from "February 10, 2020 through 'ongoing.'" Respondent further notes that Complainant did not provide any evidence to support how Respondent "continued to bring these two friends to the meeting and constantly badgered the other board members"

After review of the Complaint, and with Complainant's burden of proof in mind, 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)*, Complainant did not provide **a copy of a final decision(s)** from any court of law or other administrative agency demonstrating that Respondent violated a specific law, rule, or regulation when he engaged in any of the conduct complained of in this Count. Absent such a final decision, and even if the accusations may be actionable in another

forum, the Commission finds that the alleged violation of *N.J.S.A. 18A:12-24.1(a)* in Count 4 should be dismissed.

Based on its review of the Complaint, as well as Complainant's burden of proof for establishing a violation of *N.J.S.A. 18A:12-24.1(e)*, the Commission further 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(e)*. Complainant has not identified any personal promises made by Respondent (or to whom they were made), and has not cited any specific action taken by Respondent that exceeded the scope of his duties and had the potential to compromise the Board. To the extent that Respondent's "friends" may have been selected to fill seats on the Board, it was the action of the collective body, and not any individual member (including Respondent), which caused this to occur. As a result, the Commission finds that the alleged violation of *N.J.S.A. 18A:12-24.1(e)* in Count 4 should be dismissed.

Count 5

Complainant claims that Respondent violated *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(i)* because, for several months, he has been conducting "secretive work session[s]" without inviting the administration, and discussing employees without providing them (employees) with *Rice* Notices or otherwise having the recommendation of the administration to do so.

Respondent maintains that Complainant's assertions are "vague" and do not provide the necessary evidence to support a violation of the Code, and that Complainant failed to demonstrate how Respondent acted in his official capacity during these alleged "secretive work sessions."

After review of the Complaint, and with Complainant's burden of proof in mind, 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)*. Even though required by *N.J.A.C. 6A:28-6.4(a)(1)*, Complainant did not provide **a copy of a final decision(s)** from any court of law or other administrative agency demonstrating that Respondent violated a specific law, rule, or regulation when he engaged in any of the actions complained of in this Count. Without such a final decision, and even if the accusations may be actionable in another forum, the Commission finds that the alleged violation of *N.J.S.A. 18A:12-24.1(a)* in Count 5 should be dismissed.

Based on its review of the Complaint, as well as Complainant's burden of proof for establishing a violation of *N.J.S.A. 18A:12-24.1(e)*, the Commission also 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(e)*. Complainant has not offered sufficient factual support to corroborate her suggestion that there were "secretive work sessions" because the Complaint does not detail any dates, times, topics discussed, or indicate who was present – instead, it only claims that administrators were not present. To the extent that there may have been meetings, *but* a quorum of the Board was not present for same, it is unclear how the scheduling of such a meeting and/or the lack of administrators present at such a meeting may have exceeded the scope of Respondent's duties and had the potential to compromise the Board.

As a result, the Commission finds that the alleged violation of *N.J.S.A.* 18A:12-24.1(e) in Count 5 should be dismissed.

After review of the Complaint, and with Complainant's burden of proof in mind, the Commission additionally 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)*. To the extent that Respondent may have been present at "secretive work sessions," a fact which is far from clear in the record, Complainant has not identified who was present, the date(s) the meeting(s) occurred, and/or the topics that were discussed. Although Complainant does not indicate that members of the administration were not present, this fact alone does not mean that Respondent, and/or any other member of the Board, took "deliberate action" that undermined, opposed, compromised, or harmed school personnel. Therefore, the Commission finds that the alleged violation of *N.J.S.A.* 18A:12-24.1(i) in Count 5 should be dismissed.

Count 6

Complainant alleges that, in violation of *N.J.S.A. 18A:12-24.1(a)* and *N.J.S.A. 18A:12-24.1(i)*, Respondent "ordered" the administration to "issue improper, what he termed as blanket *Rice* Notices[,] to all employees so that the Board could discuss "any employee at any time," and the administration "firmly objected" and advised Respondent his request was "illegal and improper." Despite the administration's objection, Respondent was "insistent that the *Rice* notices be issued as he directed."

Respondent submits that Complainant failed to provide a final decision to support the violation of *N.J.S.A.* 18A:12-24.1(a), and did not demonstrate how Respondent "took deliberate action which resulted in undermining, opposing, compromising or harming school personnel in the proper performance of their duties," nor how the "miscommunication, which was later rectified" and "did not involve" Complainant, "undermined" the Assistant Director's "proper performance of his duties."

Based on its review of the Complaint, as well as Complainant's burden of proof for establishing a violation of *N.J.S.A. 18A:12-24.1(a)*, 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). Despite being required by *N.J.A.C.* 6A:28-6.4(a)(1), Complainant did not provide **a copy of a final decision(s)** from any court of law or other administrative agency demonstrating that Respondent violated a specific law, rule, or regulation when he engaged in any of the conduct complained of in this Count. In the absence of such a final decision, and even if the accusations may be actionable in another forum, the Commission finds that the alleged violation of *N.J.S.A.* 18A:12-24.1(a) in Count 6 should be dismissed.

After review of the Complaint, and with Complainant's burden of proof in mind, the Commission further 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)*. The fact that Respondent may have ordered the administration to issue "blanket" *Rice* notices for employees does not mean, in and of itself, that the request, and the continued request despite objection from the administration, resulted in undermining, opposing, compromising, or harming

school personnel. Therefore, the Commission finds that the alleged violation of *N.J.S.A. 18A:12-24.1(i)* in Count 6 should be dismissed.

Count 7

Complainant argues that Respondent violated *N.J.S.A. 18A:12-24.1(a)* and *N.J.S.A. 18A:12-24.1(e)* because he “is guiding the [B]oard in entering into financial contracts and agreements without the proper vetting and recommendation of the Lead Person” of the GCS, and “has directed” the Board and the BS “to seek bids for services and award contracts to vendors “without the knowledge, advice or recommendation of the Lead Person.”

Respondent counters that Complainant failed to provide a final decision to support the violation of *N.J.S.A. 18A:12-24.1(a)*; has not demonstrated how the “Board’s proper approval to renew, award or permit to expire vendor contracts through the passage of a Resolution was” illegal or unethical; Complainant’s lack of knowledge about a Resolution does not mean that Respondent failed to “uphold or enforce any laws ... pertaining to schools”; and Complainant did not provide any evidence to support “what personal promises” Respondent made “(or to whom),” nor any private action that he took that compromised the Board on June 8, 2020.

Based on its review of the Complaint, as well as Complainant’s burden of proof for establishing a violation of *N.J.S.A. 18A:12-24.1(a)*, 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)*, Complainant did not provide **a copy of a final decision(s)** from any court of law or other administrative agency demonstrating that Respondent violated a specific law, rule, or regulation when he engaged in any of the actions complained of in this Count. Absent such a final decision, and even if the accusations may be actionable in another forum, the Commission finds that the alleged violation of *N.J.S.A. 18A:12-24.1(a)* in Count 7 should be dismissed.

After review of the Complaint, and with Complainant’s burden of proof in mind, the Commission also 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(e)*. Complainant does not indicate that Respondent made any personal promises, and has not identified any formal “action” he may have taken beyond the scope of his duties that had the potential to compromise the Board. To the extent that the Board voted to enter into financial contracts and agreements without the proper vetting and recommendation of school personnel, it was the Board, and not Respondent alone, who failed to follow appropriate protocols and procedures. Therefore, the Commission finds that the alleged violation of *N.J.S.A. 18A:12-24.1(e)* in Count 7 should be dismissed.

Count 8

Complainant contends that, in violation of *N.J.S.A. 18A:12-24.1(a)*, *N.J.S.A. 18A:12-24.1(d)*, and *N.J.S.A. 18A:12-24.1(e)*, Respondent has been “directly interfering in the administration of the school” because he “has hindered” Complainant’s ability to hire “the necessary professional development facilitator” to deliver, coach, and mentor teaching staff, and instead has told Complainant to “redeploy classroom teachers” who are able to “train, coach and mentor new teachers.”

Respondent maintains that Complainant failed to provide a final decision to support the violation of *N.J.S.A. 18A:12-24.1(a)*; “failed to demonstrate” how the “exchange” between him and Complainant “was a direct order” from Respondent to her; failed to provide evidence to show “how” Respondent “hindered” her hiring ability or how his “purported comment interfered in the administration of the school”; and has “not alleged what personal promises” Respondent made or “what actions he took that had the potential to compromise the Board.”

Based on its review of the Complaint, as well as Complainant’s burden of proof for establishing a violation of *N.J.S.A. 18A:12-24.1(a)*, 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)*. Even though required by *N.J.A.C. 6A:28-6.4(a)(1)*, Complainant did not provide a **copy of a final decision(s)** from any court of law or other administrative agency demonstrating that Respondent violated a specific law, rule, or regulation when he engaged in any of the conduct complained of in this Count. Without such a final decision, and even if the accusations may be actionable in another forum, the Commission finds that the alleged violation of *N.J.S.A. 18A:12-24.1(a)* in Count 8 should be dismissed.

After review of the Complaint, and with Complainant’s burden of proof in mind, the Commission additionally 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)*. Complainant has not offered any facts suggesting that Respondent gave a direct order to anyone (including her), and has not offered any facts evidencing Respondent’s direct involvement in the activities or functions of others or the day-to-day administration of the school. To the extent that Respondent may not have agreed with Complainant’s desire to hire additional staff member(s), the ultimate determination on such an issue is rendered by the Board, and not by an individual member. Therefore, the Commission finds that the alleged violation of *N.J.S.A. 18A:12-24.1(d)* in Count 8 should be dismissed.

Based on its review of the Complaint, as well as Complainant’s burden of proof for establishing a violation of *N.J.S.A. 18A:12-24.1(e)*, the Commission further 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(e)*. Complainant does not suggest that Respondent made any personal promises, and has not identified any formal “action” he may have taken beyond the scope of his duties that had the potential to compromise the Board. To the extent he voted against a formal resolution, Respondent is free to vote as he feels most appropriate, and to the extent he privately advised Complainant of his position, Respondent is not empowered to make such decisions in a vacuum – instead, same must be deliberated and

considered by the Board. As a result, the Commission finds that the alleged violation of *N.J.S.A.* 18A:12-24.1(e) in Count 8 should be dismissed.

Count 9

Complainant asserts that because the Board's new counsel was approved at the Board's meeting on June 8, 2020, "without any discussion," Respondent violated *N.J.S.A.* 18A:12-24.1(a). Respondent submits that Complainant failed to provide a final decision to support the violation of *N.J.S.A.* 18A:12-24.1(a), and Complainant's lack of knowledge about a Resolution does not mean that Respondent failed to "uphold or enforce any laws ... pertaining to schools."

After review of the Complaint, and with Complainant's burden of proof in mind, 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). Despite being required by *N.J.A.C.* 6A:28-6.4(a)(1), Complainant did not provide a **copy of a final decision(s)** from any court of law or other administrative agency demonstrating that Respondent violated a specific law, rule, or regulation when he engaged in any of the actions complained of in this Count. In the absence of such a final decision, and even if the accusations may be actionable in another forum, the Commission finds that the alleged violation of *N.J.S.A.* 18A:12-24.1(a) in Count 9 should be dismissed.

Count 10

Complainant claims that Respondent violated *N.J.S.A.* 18A:12-24.1(a) and *N.J.S.A.* 18A:12-24.1(d) because he "recently supervised the hiring of an outside cleaning contractor, without the input, vetting or recommendation of" the administration, and has "refused to cooperate in setting up [a separate bank] account" for receipt of donations, thereby jeopardizing the receipt of such donations.

Respondent counters that Complainant failed to provide a final decision to support the violation of *N.J.S.A.* 18A:12-24.1(a), and Complainant has not demonstrated how Respondent's "alleged refusal to individually approve, and presumably without Board authority, [] Complainant's" ability to open an account was illegal or unethical. Respondent maintains that the Board, not Respondent, "is responsible for the fiscal control of and system of accounting" for the school.

Based on its review of the Complaint, as well as Complainant's burden of proof for establishing a violation of *N.J.S.A.* 18A:12-24.1(a), 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), Complainant did not provide a **copy of a final decision(s)** from any court of law or other administrative agency demonstrating that Respondent violated a specific law, rule, or regulation when he engaged in any of the conduct complained of in this Count. Absent such a final decision, and even if the accusations may be actionable in another forum, the Commission finds that the alleged violation of *N.J.S.A.* 18A:12-24.1(a) in Count 10 should be dismissed.

After review of the Complaint, and with Complainant's burden of proof in mind, the Commission also 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)*. There are no facts in the Complaint indicating that Respondent gave a “direct order” to anyone, or that he became directly involved in activities or functions that are the responsibility of others or the day-to-day administration of the school. The Commission agrees that the complained of actions, i.e., hiring a contractor and/or setting up a bank account, are Board functions and cannot be accomplished unless and until the Board approves those actions. Therefore, the Commission finds that the alleged violation of *N.J.S.A. 18A:12-24.1(d)* in Count 10 should be dismissed.

Count 11

Complainant contends that Respondent violated *N.J.S.A. 18A:12-24.1(a)* and *N.J.S.A. 18A:12-24.1(i)* because, during two different Board meetings, he “verbally attacked and criticized [Complainant] in public and during an open forum.”

Respondent maintains that Complainant failed to provide a final decision to support the violation of *N.J.S.A. 18A:12-24.1(a)*, and Complainant did not provide any evidence to support her assertion that Respondent “verbally attacked or criticized” her in violation of *N.J.S.A. 18A:12-24.1(i)*. In fact, and regarding the latter allegation, the minutes from the August 10, 2020, Board meeting do not indicate that Respondent made any negative statements to or about Complainant.

Based on its review of the Complaint, as well as Complainant’s burden of proof for establishing a violation of *N.J.S.A. 18A:12-24.1(a)*, 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)*. Even though required by *N.J.A.C. 6A:28-6.4(a)(1)*, Complainant did not provide **a copy of a final decision(s)** from any court of law or other administrative agency demonstrating that Respondent violated a specific law, rule, or regulation when he engaged in any of the actions complained of in this Count. Without such a final decision, and even if the accusations may be actionable in another forum, the Commission finds that the alleged violation of *N.J.S.A. 18A:12-24.1(a)* in Count 11 should be dismissed.

After review of the Complaint, and with Complainant’s burden of proof in mind, the Commission additionally 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)*. The fact that Respondent may have publicly discussed Complainant does not mean, in and of itself, that he took “deliberate action” which resulted in undermining, opposing, compromising, or harming her in the proper performance of her duties. Although it may not have been preferable for an issue(s) or concern(s) related to and/or touching upon Complainant’s duties and responsibilities to be discussed publicly, it is the prerogative of the Board and its individual members to do so. The Commission further notes that, absent specific factual averments detailing how Respondent “verbally attacked” and “criticized” her (including what was said), a violation cannot be substantiated. Therefore, the Commission finds that the alleged violation of *N.J.S.A. 18A:12-24.1(i)* in Count 11 should be dismissed.

Count 12

Complainant claims that Respondent violated *N.J.S.A. 18A:12-24.1(d)* and *N.J.S.A. 18A:12-24.1(e)* because he sent an email to Complainant “direct[ing] [her] to send” a letter to the GCS parents and to post notices outside of the school regarding the “reopening after the COVID-19 school closure.”

Respondent submits that, “As [his] email indicates,” he contacted Complainant and requested that she “ensure that by Friday, August 14th, large signs were posted on the doors ... notifying of this critical update.” Respondent argues that he did not “order Complainant to do anything, rather request that she ensure” that students’ families were aware of the new reopening plan. According to Respondent, Complainant has not provided any evidence to demonstrate “how his action” compromised the Board and “was not in line with the Board’s Resolution of August 10th regarding virtual instruction.”

Based on its review of the Complaint, as well as Complainant’s burden of proof for establishing a violation of *N.J.S.A. 18A:12-24.1(d)*, the Commission further 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)*. Although Respondent did send an email to Complainant asking her to “[p]lease make sure” that signs were posted and an informational letter was sent/distributed to parents regarding school reopening, it is clear from the plain language of the email that Respondent was primarily concerned with *when*, not how, a time-sensitive Board decision (not a Respondent specific decision) would be relayed to the community. There is nothing to suggest that Complainant’s recommendation for notification (i.e., signs and a letter) was the only means by which Complainant could communicate the Board’s decision. As a result, the Commission finds that the alleged violation of *N.J.S.A. 18A:12-24.1(d)* in Count 12 should be dismissed.

After review of the Complaint, and with Complainant’s burden of proof in mind, 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(e)*. Again, the plain language of Respondent’s email indicates that he was following-up on *when* Complainant would advise the community of the Board’s decision regarding school reopening. Ensuring that Board decisions are communicated to the public in a timely fashion does not exceed the scope of Respondent’s duties as the Board President and/or have the potential to compromise the Board. Therefore, the Commission finds that the alleged violation of *N.J.S.A. 18A:12-24.1(e)* in Count 12 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 the Complaint were timely filed, but to *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)* as alleged in Counts 1–11; violated *N.J.S.A. 18A:12-24.1(d)* as asserted in Counts 1–2, Count 8, Count 10, and Count 12; violated *N.J.S.A. 18A:12-24.1(e)* as contended in Counts 1–5, Counts 7–8, and Count 12; and/or violated *N.J.S.A. 18A:12-24.1(i)* as argued in Counts 1–2, Counts 5–6, and Count 11.

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 the Complaint were timely filed, but to **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) as alleged in Counts 1–11; violated *N.J.S.A.* 18A:12-24.1(d) as asserted in Counts 1–2, Count 8, Count 10, and Count 12; violated *N.J.S.A.* 18A:12-24.1(e) as contended in Counts 1–5, Counts 7–8, and Count 12; and/or violated *N.J.S.A.* 18A:12-24.1(i) as argued in Counts 1–2, Counts 5–6, and Count 11.

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 22, 2020

**Resolution Adopting Decision
in Connection with C41-20**

Whereas, at its meeting on November 24, 2020, the School Ethics Commission (Commission) considered the Complaint, the Motion to Dismiss in Lieu of Answer (Motion to Dismiss), and the response to the Motion to Dismiss submitted in connection with the above-referenced matter; and

Whereas, at its meeting on November 24, 2020, the Commission discussed finding that the allegations in the Complaint were timely filed; and

Whereas, at its meeting on November 24, 2020, the Commission discussed 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) as alleged in Counts 1-11; violated *N.J.S.A.* 18A:12-24.1(d) as asserted in Counts 1-2, Count 8, Count 10, and Count 12; violated *N.J.S.A.* 18A:12-24.1(e) as contended in Counts 1-5, Counts 7-8, and Count 12; and/or violated *N.J.S.A.* 18A:12-24.1(i) as argued in Counts 1-2, Counts 5-6, and Count 11; and

Whereas, at its meeting on December 22, 2020, the Commission reviewed and voted to approve the within decision as accurately memorializing its actions/findings from its meeting on November 24, 2020; 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 22, 2020.

Kathryn A. Whalen, Director
School Ethics Commission