

***Before the School Ethics Commission***  
***Docket No.: C19-21***  
***Decision on Motion to Dismiss***

---

**Vivian Yudin King,**  
***Complainant***

v.

**John J. Butto,**  
**Ramapo Indian Hills Regional Board of Education, Bergen County,**  
***Respondent***

---

**I. Procedural History**

This matter arises from a Complaint that was filed on June 10, 2021, by Vivian Yudin King (Complainant), a member of the Ramapo Indian Hills Regional Board of Education (Board), alleging that John J. Butto (Respondent), also a member of the Board, violated the School Ethics Act (Act), *N.J.S.A.* 18A:12-21 *et seq.* By correspondence dated June 11, 2021, Complainant was notified that the Complaint was deficient, and required amendment before the School Ethics Commission (Commission) could accept her filing. On June 14, 2021, 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 Complaint avers that Respondent violated *N.J.S.A.* 18A:12-24.1(d) of the Code of Ethics for School Board Members (Code) in Counts 3–4, violated *N.J.S.A.* 18A:12-24.1(i) of the Code in Counts 1–6, and violated *N.J.S.A.* 18A:12-24.1(j) of the Code in Count 6.

On June 14, 2021, 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.<sup>1</sup> On July 1, 2021, Respondent filed a Motion to Dismiss in Lieu of Answer (Motion to Dismiss), and also alleged that the Complaint is frivolous. On July 20, 2021, Complainant filed a response to the Motion to Dismiss and allegation of frivolous filing.

The parties were notified by correspondence dated August 20, 2021, that this matter would be placed on the Commission’s agenda for a special meeting on August 30, 2021, in order to make a determination regarding the Motion to Dismiss and allegation of frivolous filing.<sup>2</sup> At its special meeting on August 30, 2021, the Commission considered the filings in this matter and,

---

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

<sup>2</sup> The parties were initially advised, by correspondence dated August 16, 2021, that this matter would be discussed by the Commission at its regularly scheduled meeting on August 24, 2021. Unfortunately, due to lack of a quorum, the meeting scheduled for August 24, 2021, was cancelled.

at its meeting on September 21, 2021, the Commission voted 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(d) in Counts 3–4, *N.J.S.A.* 18A:12-24.1(i) in Counts 1–6, and/or *N.J.S.A.* 18A:12-24.1(j) in Count 6. 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***

By way of background, and relevant to each Count of the Complaint, Complainant is the Chairwoman of the Board’s Facilities/Return to Learning/Safety Management Committee (Committee). The meeting dates/times for the Committee meetings were scheduled in January 2021, and there are eight members on the Committee. The Committee’s meeting dates/times were also added to the Board calendar.

In Count 1, Complainant asserts that Respondent violated *N.J.S.A.* 18A:12-24.1(i) on March 14, 2021, and March 15, 2021, when he “engaged in demeaning and aggressive emails” with Complainant regarding the scheduling of Committee meetings. According to Complainant, in order for the Committee to work in “proper performance of [its] duties,” all members “must do their best to attend the meeting.” Although Respondent knew about the Committee meeting dates/times since January 2021, Respondent regularly “engages in a back and forth demeaning and harassing email exchange with [Complainant] due to his inability to attend the set time of the meeting.” Complainant further asserts Respondent is “the ONLY member who has an issue EVERY month.”

In Count 2, Complainant alleges that Respondent violated *N.J.S.A.* 18A:12-24.1(i) on January 22, 2021, when he “began emailing [Complainant] about meeting conflicts starting with the first [C]ommittee meeting.” Again, in order for the Committee to work in “proper performance of [its] duties,” all members “must do their best to attend the meeting.” Although Respondent knew about the Committee meeting dates/times since January 2021, Respondent regularly “engages in a back and forth demeaning and harassing email exchange with [Complainant] due to his inability to attend the set time of the meeting.” Complainant further asserts Respondent is “the ONLY member who has an issue EVERY month.”

In Count 3, Complainant contends that Respondent violated *N.J.S.A.* 18A:12-24.1(d) and *N.J.S.A.* 18A:12-24.1(i) on May 3, 2021, and May 4, 2021, because he sent her (Complainant) four “emails regarding the fact that he could not attend, once again, the date and time of a monthly [C]ommittee meeting.” In his emails, Respondent claimed that Complainant “had no right to allow the alternate to participate in the meeting if he was unable to attend and advised that he would not give permission for the alternate to ever attend in his stead.” As such, it is Complainant’s position that Respondent continually refuses to work together with his fellow Board members in the proper performance of their duties. The Board has a policy which permits alternates to attend a Committee meeting when a standing member cannot attend, yet Respondent insisted that Complainant has “no right” to have the alternate attend, and refused to give his permission for the alternate’s attendance.

In Count 4, Complainant asserts that Respondent violated *N.J.S.A.* 18A:12-24.1(d) and *N.J.S.A.* 18A:12-24.1(i) on May 25, 2021, because, when trying to confirm the June Committee meeting, Respondent “engaged in what felt like harassing emails, trying to bully [Complainant] into changing the date and time to once again suit his calendar.” Consequently, and even though there is policy which permits alternates to attend Committee meetings, Respondent continually refuses to work together with his fellow Board members in the proper performance of their duties in violation of the cited subsections of the Code.

In Count 5, Complainant alleges that Respondent violated *N.J.S.A.* 18A:12-24.1(i) on April 1, 2021, and April 8, 2021, because after sending an email to the Committee with the subject “DO NOT REPLY ALL,” Complainant received “an email return from [Respondent] telling [Complainant] to cease sending those emails.” It is Complainant’s position that “the sharing of important information with fellow Board members is tantamount to the ‘proper performance of their duties,’” and Respondent’s “demand” that he no longer be included on such emails “is not only not ‘supporting’ his fellow Board [m]embers but he is inhibiting [Complainant] from performing [her] ‘proper performance of [her] duties.’”

In Count 6, Complainant contends that Respondent violated *N.J.S.A.* 18A:12-24.1(i) and *N.J.S.A.* 18A:12-24.1(j) on March 15, 2021, because “after once again being harassed by” Respondent, Complainant asked the Board President to help her (Complainant) make Respondent’s behavior stop because she (Complainant) felt that “it was impeding [her] from doing [her] job” and “making [her] feel uncomfortable.” Complainant’s request for “intervention” was denied. Because her request for assistance was denied and the harassment continued, Respondent continued to impede Complainant in the proper performance of her duties.

#### **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. In his filing, Respondent argues Complainant did not allege that Respondent was “ever physically abusive to her in any way, shape or form – or even physically near her.” Further, Complainant did not allege that Respondent “ever spoke to [Complainant] in a harassing or threatening way – or even spoke to her at all.” In short, the Complaint is “based on a few emails, all of which were copied to others and none of which contain harassing or threatening phrases ... .” Of note, when Complainant sent an email to Respondent complaining of his (Respondent’s) failure to agree with her, he “took all the correct steps” by contacting the Board President, the Business Administrator, and “ceased any emails” to Complainant.

As part of his Motion to Dismiss and allegation of frivolous filing, Respondent submitted an investigative report that was prepared regarding the allegations in the Complaint. In the investigative report, it was determined that “the conflict between [Complainant and Respondent] is the product of a disagreement over the manner in which [C]ommittee meetings are to be scheduled. A personality conflict was exacerbated by COVID-19 related restrictions foreclosing in-person meetings ... .” It was also noted that there was “no evidence of harassment” by Respondent of Complainant, no evidence of “bullying,” no evidence of a violation of the Act, and no evidence of a violation of a Board policy or regulation. There was also “no evidence of malfeasance or nonfeasance” by any other member of the Board or the administration. However,

the investigation did recommend the drafting of a resolution to clarify the scheduling and rescheduling of Committee meetings. Despite the findings of this “investigation,” Respondent submits that Complainant refused to withdraw her Complaint.

Respondent maintains, based on the above, that the Complaint is frivolous, sanctions should be imposed, and the Complaint should be dismissed.

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

In her response to the Motion to Dismiss and allegation of frivolous filing, Complainant argues that instead of addressing her claims, Respondent “filed a pre-answer Motion to Dismiss” that “fails to cite to or contest a single allegation in the Complaint or explain why the Complaint should supposedly be dismissed.” According to Complainant, Respondent “relies upon nothing more than an earlier letter” from his attorney to Board counsel, which “supposedly ‘sets out the reason the [ ] Complaint should be dismissed and sanctions, including a fine and attorney’s fees[,] should be imposed.’” Since the letter is not a legal brief, Complainant asserts it should be denied. Moreover, the “substance of” the letter fails to address any of the specific claims in the Complaint, and the letter simply notes, “there is a void of allegations that Respondent was physically abusive to [Complainant] or that he otherwise harassed her.” Complainant argues her Complaint “is focused on Respondent’s intentional efforts to frustrate and impede upon her efforts to act in her capacity as a Board member.” Because Respondent did not file a legal brief, and because his “sole support for dismissal fails to address any” Code violations alleged by Complainant, Respondent’s Motion to Dismiss should be denied.

As to Respondent’s reliance on the investigative report to support that the “Complaint lacks merit or that it is frivolous,” Complainant asserts the Commission “should not afford any weight” to the investigation or the report. In this regard, Complainant disputes Respondent’s claim that he did not bully or harass Complainant and, therefore, “his investigation at the request of [Board counsel] is neither binding upon the Commission nor informative regarding the Commission’s assessment of the specific charges raised in the Complaint.”

Complainant maintains, “through an ongoing, repeated pattern of deliberate acts, Respondent is intentionally interfering with her efforts to carry out her responsibilities as [Chairperson] of the Board’s [Committee].” The meeting dates/times “were long planned among Committee members under [Complainant’s] stewardship” and each month Respondent would “feign an inability to attend and thereby prevent and/or unreasonably delay the Committee from partaking in meetings instrumental to the operations of the Board.” In addition to delaying the meetings because of changes in the schedule, Respondent would not allow an alternate to attend a meeting in his stead. Complainant reaffirms Respondent’s actions were “deliberate”, and intended to undermine Complainant in the performance of her duties as Chairwoman. Furthermore, Complainant reaffirms that Respondent was “aggressive, harassing and demeaning,” and “overstepped his bounds in seeking to address [Complainant’s] complaints in secrecy with the Board [P]resident.” Complainant contends the Motion to Dismiss should be denied in its entirety.

Finally, Complainant asserts, “there is absolutely no merit to Respondent’s demand for the Commission to find the Complaint frivolous.” According to Complainant, Respondent “fails

to articulate how or why the Complaint is frivolous.” Complainant contends the Complaint contains “legitimate, cognizable claims asserted against Respondent as a direct result of his several violations of [Code].”

Complainant “respectfully submits that the Motion to Dismiss should be denied.” To the extent that the Commission “is prepared to render a contrary decision, [Complainant] respectfully seeks leave to amend the Complaint to further elaborate on her factual findings.”

### **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(d) in Counts 3–4, *N.J.S.A.* 18A:12-24.1(i) in Counts 1–6, and/or *N.J.S.A.* 18A:12-24.1(j) in Count 6.

#### **B. *Jurisdiction of the Commission***

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

With the jurisdiction of the Commission in mind, to the extent that Complainant seeks a determination that Respondent’s conduct, whether actions or speech, constituted “harassment” or “bullying,” the Commission advises that such a determination(s) falls outside the scope, authority, and jurisdiction of the Commission. Nonetheless, Complainant may be able to pursue those claims in the appropriate tribunal; however, the Commission is not the appropriate entity to adjudicate such issues. As such, those claims are dismissed.

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

In the Complaint, Complainant argues that Respondent violated *N.J.S.A.* 18A:12-24.1(d) in Counts 3–4, *N.J.S.A.* 18A:12-24.1(i) in Counts 1–6, and *N.J.S.A.* 18A:12-24.1(j) in Count 6. These provisions of the Code provide:

- 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.

- j. I will refer all complaints to the chief administrative officer and will act on the complaints at public meetings only after failure of an administrative solution.

*Alleged Violations of N.J.S.A. 18A:12-24.1(d)*

**Counts 3–4**

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 school district or charter school.

In **Count 3**, Complainant contends that Respondent violated *N.J.S.A. 18A:12-24.1(d)* on May 3, 2021, and May 4, 2021, because he sent her (Complainant) four “emails regarding the fact that he could not attend, once again, the date and time of a monthly [C]ommittee meeting,” and claimed that Complainant “had no right to allow the alternate to participate in the meeting if he was unable to attend and advised that he would not give permission for the alternate to ever attend in his stead.” As such, Respondent continually refuses to work together with his fellow Board members in the proper performance of their duties.

Respondent counters that Complainant did not allege that Respondent was “ever physically abusive to her in any way, shape or form – or even physically near her”; Complainant did not allege that Respondent “ever spoke to [Complainant] in a harassing or threatening way – or even spoke to her at all”; the Complaint is “based on a few emails, all of which were copied to others and none of which contain harassing or threatening phrases ... .”; Respondent “ceased” emailing Complainant when she contacted him to “complain” about his (Respondent’s) emails; and an impartial investigation revealed that the “conflict” between Complainant and Respondent was a “personality conflict” that was “exacerbated by COVID-19,” and “no evidence of harassment” by Respondent of Complainant, no evidence of “bullying,” no evidence of a violation of the Act, and no evidence of a violation of a Board policy or regulation.

After review of the Complaint, the Commission finds that even if the facts as contended 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)*. Even if Respondent sent multiple emails to Complainant advising that he could not (or would not) attend a monthly Committee meeting, and even if he did not give “permission” for the alternate to attend “in his stead,” there is absolutely no evidence that Respondent gave a direct order to *school personnel* (e.g., an administrator, teaching staff member, etc.), or that he became directly involved in the administration of the District. Therefore, the Commission finds that the alleged violation of *N.J.S.A. 18A:12-24.1(d)* in Count 3 should be dismissed.

In **Count 4**, Complainant asserts that Respondent violated *N.J.S.A. 18A:12-24.1(d)* on May 25, 2021, because, when trying to confirm the June Committee meeting, Respondent “engaged in what felt like harassing emails, trying to bully [Complainant] into changing the date and time to once again suit his calendar.” As such, Complainant submits that Respondent continually refuses to work together with his fellow Board members in the proper performance

of their duties. Respondent counters that the alleged violation of *N.J.S.A.* 18A:12-24.1(d) (in Count 4) should be dismissed for the same reasons set forth above.

Based on its review of the Complaint, the Commission finds that even if the facts as asserted 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). Once again, even if Respondent sent what Complainant characterizes as “harassing” emails, and tried to “bully” her (Complainant) to change the date of the monthly Committee meeting, the Complaint is devoid of facts and evidence indicating that Respondent gave a direct order to *school personnel* (e.g., an individual who works for the District and is ultimately supervised by the Board), or otherwise became directly involved in the administration of the District. At worst, the facts and evidence indicate that Respondent failed to work cooperatively with a fellow member of the Board (and the Chairwoman of a committee), an individual over which he (Respondent) has no supervisory authority or oversight. As a result, the Commission finds that the alleged violation of *N.J.S.A.* 18A:12-24.1(d) in Count 4 should be dismissed.

### ***Alleged Violations of N.J.S.A. 18A:12-24.1(i)***

#### **Counts 1–6**

Pursuant to *N.J.A.C.* 6A:28-6.4(a)(9), factual evidence of a violation(s) 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.

In each count of the Complaint, Complainant claims that Respondent violated *N.J.S.A.* 18A:12-24.1(i) as follows: on March 14, 2021, and March 15, 2021, when he “engaged in demeaning and aggressive emails” with Complainant regarding the scheduling of Committee meetings (**Count 1**); on January 22, 2021, when he “began emailing [Complainant] about meeting conflicts starting with the first [C]ommittee meeting” (**Count 2**); on May 3, 2021, and May 4, 2021, when he sent her (Complainant) four “emails regarding the fact that he could not attend, once again, the date and time of a monthly [C]ommittee meeting,” and “advised that he would not give permission for the alternate to ever attend in his stead” (**Count 3**); on May 25, 2021, because, when trying to confirm the June Committee meeting, Respondent “engaged in what felt like harassing emails, trying to bully [Complainant] into changing the date and time to once again suit his calendar” (**Count 4**); on April 1, 2021, and April 8, 2021, because after sending an email to the Committee with the subject “DO NOT REPLY ALL,” Complainant received “an email return from [Respondent] telling [Complainant] to cease sending those emails” (**Count 5**); and on March 15, 2021, because “after once again being harassed by” Respondent, Complainant asked, to no avail, the Board President to help her (Complainant) make Respondent’s behavior stop because she (Complainant) felt that “it was impeding [her] from doing [her] job” (**Count 6**).

Respondent submits that the alleged violations of *N.J.S.A.* 18A:12-24.1(i) (in Counts 1–6) should be dismissed for the same reasons as described above.

After review of the Complaint, the Commission finds that even if the facts as claimed are proven true by sufficient credible evidence, they would not support findings that Respondent

violated *N.J.S.A.* 18A:12-24.1(i). The crux of Complainant’s argument is that, by repeatedly refusing to attend Committee meetings and/or demanding that Complainant change the date(s) and time(s) thereof in order to accommodate Respondent and his (Respondent’s) schedule, Respondent impeded and interfered with the Board and the Committee, and otherwise prevented Complainant from being able to lead the Committee. However, neither Respondent, the Board, individual Board members (including Complainant), nor members of a Board committee constitute “school personnel.” The Board and its individual members are the individuals who “run” the District and oversee the personnel, i.e., the people employed by the Board. Therefore, the Commission finds that the alleged violations of *N.J.S.A.* 18A:12-24.1(i) in Counts 1–6 should be dismissed.

### ***Alleged Violation of N.J.S.A. 18A:12-24.1(j)***

#### **Count 6**

In **Count 6**, Complainant alleges that Respondent violated *N.J.S.A.* 18A:12-24.1(j) on March 15, 2021, because “after once again being harassed by” Respondent, Complainant asked the Board President to help her (Complainant) make Respondent’s behavior stop because she (Complainant) felt that “it was impeding [her] from doing [her] job.” When Complainant was unable to get the requested assistance from the Board President, the harassment continued, and Respondent continued to impede Complainant in the proper performance of her duties.

Respondent counters that the alleged violation of *N.J.S.A.* 18A:12-24.1(j) (in Count 6) should be dismissed for the same reasons detailed earlier.

As set forth in *N.J.A.C.* 6A:28-6.4(a)(10), factual evidence of a violation of *N.J.S.A.* 18A:12-24.1(j) shall include evidence that Respondent acted on or attempted to resolve a complaint, or conducted an investigation or inquiry related to a complaint (i) prior to referral to the chief administrative officer, or (ii) at a time or place other than a public meeting and prior to the failure of an administrative solution.

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(j). Assuming Respondent did continue to “harass” or otherwise send “harassing” emails to Complainant after she (Complainant) unsuccessfully sought assistance from the Board President regarding their (Complainant and Respondent’s) strained relationship, Respondent’s conduct, even if inappropriate, does not demonstrate that he “acted on or attempted to resolve a complaint” or “conducted an investigation related to a complaint” before it was referred to the Superintendent, or at a time other than at a public Board meeting (and prior to the failure of administrative solution). By Complainant’s own account of the relevant events, she asked the Board President, not the Superintendent, for assistance, and her request was rebuffed. As a result, the Commission finds that the alleged violation of *N.J.S.A.* 18A:12-24.1(j) in Count 6 should be dismissed.

Accordingly, and granting all inferences in favor of the non-moving party (Complainant), the Commission has determined 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(d) in Counts 3–4, *N.J.S.A.* 18A:12-24.1(i) in Counts 1–6, and/or *N.J.S.A.* 18A:12-24.1(j) in Count 6.

**D. *Procedural Deficiency and Request to Amend Complaint***

In her response to the Motion to Dismiss and allegation of frivolous filing, Complainant notes that Respondent’s filing fails to conform to the requirements set forth in *N.J.A.C.* 6A:28-8.1(b), in that Respondent did not file a motion or a brief, and simply “filed a pre-answer Motion to Dismiss” that “fails to cite to or contest a single allegation in the Complaint or explain why the Complaint should supposedly be dismissed.” In addition, Respondent “relies upon nothing more than an earlier letter” from his attorney to Board counsel, which “supposedly ‘sets out the reason the [] Complaint should be dismissed and sanctions, including a fine and attorney’s fees[,] should be imposed.’” Because the letter is not a legal brief, Complainant suggests that the Motion to Dismiss and allegation of frivolous filing should be denied and/or not considered.

Although the Commission agrees with Complainant that the form and substance of Respondent’s Motion to Dismiss and allegation of frivolous filing does not strictly comply with *N.J.A.C.* 6A:28-8.1(b), the Commission also has the authority, pursuant to *N.J.A.C.* 6A:28-1.8, to relax its rules when “strict adherence thereto may be deemed inappropriate or unnecessary or may result in injustice.” In this case, because Respondent is attempting to avoid duplicative attorney fees, and because an independent (and non-binding) investigation examined the claims set forth in the Complaint, the Commission finds that strict adherence to *N.J.A.C.* 6A:28-8.1(b) is unnecessary in this case. As such, the Commission believes it is appropriate to consider and accept Respondent’s filing despite his failure to abide by the requirements for filing a formal motion and accompanying brief.

In addition, and also part of her response, Complainant states, to the extent that the Commission “is prepared to [grant the Motion to Dismiss, Complainant] respectfully seeks leave to amend the Complaint to further elaborate on her factual findings.”

Pursuant to *N.J.A.C.* 6A:28-6.7(c), “Once an answer or other responsive pleading is filed, an amendment to a complaint may be made by the complainant *only with the consent of each respondent or by leave of the Commission upon written application*” (emphasis added). In this case, Complainant has not indicated that Respondent consents to her request to amend; therefore, the only basis upon which amendment to the Complaint may be permitted is by leave of the Commission.

At its special meeting on August 30, 2021, the Commission considered Complainant’s request, and after thoroughly reviewing the nature of the allegations pled in the Complaint, the Commission voted to decline the requested amendment of the Complaint. If the Commission granted leave to amend a complaint whenever it finds a Complaint to be legally insufficient to establish a violation(s) of the Act, this would unfairly prejudice Respondent. It is Complainant’s responsibility, as the initiating party, to ensure that the factual averments and evidence offered in support thereof are sufficient to withstand a Motion to Dismiss. When the Complainant fails to do so, it is the Respondent’s right to request dismissal, and the Commission’s duty to grant it.

Although the Commission, for the reasons set forth herein, has determined to grant the Motion to Dismiss in its entirety, it notes that this case is yet another unfortunate example of the acrimony that can result when adults are far too concerned with themselves (or engaging in a needless and futile power struggle), and negligibly concerned with serving the needs of the District's students. As elected school officials, members of a board of education must be able to identify and resolve obstacles to their service (including differences of opinion), and must always work together with their fellow board members to serve the District's students. When board members allow their personal differences to divide them, the only individuals who suffer are the students - such an outcome is wholly unacceptable, and defeats the very purpose for which board members are elected to serve.

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

At a special meeting on August 30, 2021, 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 21, 2021, 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 **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(d) in Counts 3-4, *N.J.S.A.* 18A:12-24.1(i) in Counts 1-6, and/or *N.J.S.A.* 18A:12-24.1(j) in Count 6. The Commission also voted to find that the Complaint is not frivolous, and to deny Respondent's request for sanctions.

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

---

Robert W. Bender, Chairperson

Mailing Date: September 21, 2021

***Resolution Adopting Decision  
in Connection with C19-21***

***Whereas***, at a special meeting on August 30, 2021, 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 a special meeting on August 30, 2021, 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(d) in Counts 3–4, *N.J.S.A.* 18A:12-24.1(i) in Counts 1–6, and/or *N.J.S.A.* 18A:12-24.1(j) in Count 6; and

***Whereas***, at a special meeting on August 30, 2021, the Commission discussed finding the Complaint not frivolous, and denying Respondent’s request for sanctions; and

***Whereas***, at its meeting on September 21, 2021, the Commission reviewed and voted to approve the within decision as accurately memorializing its actions/findings from its special meeting on August 30, 2021; 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 September 21, 2021.

---

Kathryn A. Whalen, Director  
School Ethics Commission