

Before the School Ethics Commission
Docket No.: C65-20
Decision on Motion to Dismiss

**Felicia Spitz,
*Complainant***

v.

**Deborah Bronfeld and Daniel Dart,
Princeton Board of Education, Mercer County,
*Respondents***

I. Procedural History

This matter arises from a Complaint that was filed on October 28, 2020, by Felicia Spitz (Complainant), alleging that Deborah Bronfeld (Respondent Bronfeld) and Daniel Dart (Respondent Dart) (collectively referred to as Respondents), members of the Princeton Board of Education (Board), violated the School Ethics Act (Act), *N.J.S.A.* 18A:12-21 *et seq.* More specifically, the Complaint alleges that Respondents violated *N.J.S.A.* 18A:12-24.1(a) and *N.J.S.A.* 18A:12-24.1(e) of the Code of Ethics for School Board Members (Code) in Count 1, violated *N.J.S.A.* 18A:12-24(b) in Count 2, violated *N.J.S.A.* 18A:12-24(a) in Count 3, and violated *N.J.S.A.* 18A:12-24(d) in Count 4.

On October 29, 2020, the Complaint was served on Respondents, via electronic mail, notifying them that charges were filed against them with the School Ethics Commission (Commission), and advising that they had twenty (20) days to file a responsive pleading.¹ On November 14, 2020, Respondent Dart filed a Motion to Dismiss in Lieu of Answer (Motion to Dismiss), and also alleged that the Complaint is frivolous. On December 4, 2020, Complainant filed a response to Respondent Dart's Motion to Dismiss and allegation of frivolous filing. Subsequent to retaining counsel, Respondent Bronfeld separately filed a Motion to Dismiss on December 13, 2020, and Complainant filed a response thereto on January 12, 2021.²

The parties were notified by correspondence dated February 16, 2021, that this matter would be placed on the Commission's agenda for its meeting on February 23, 2021, in order to make a determination regarding the Motions to Dismiss and allegation of frivolous filing. At its meeting on February 23, 2021, the Commission considered the filings in this matter and, at its meeting on March 23, 2021, the Commission voted to grant the Motions to Dismiss in their entirety because Complainant failed to plead sufficient, credible facts to support a finding that

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

² Although the filing on December 13, 2020, was initially submitted on behalf of both Respondent Dart and Respondent Bronfeld, it was only accepted as to Respondent Bronfeld.

Respondents violated *N.J.S.A.* 18A:12-24.1(a) and *N.J.S.A.* 18A:12-24.1(e) as alleged in Count 1, violated *N.J.S.A.* 18A:12-24(b) as argued in Count 2, violated *N.J.S.A.* 18A:12-24(a) as contended in Count 3, and/or violated *N.J.S.A.* 18A:12-24(d) as asserted in Count 4. The Commission also voted to find the Complaint not frivolous, and to deny Respondent Dart's request for sanctions.

II. Summary of the Pleadings

A. *The Complaint*

In Count 1, Complainant states that, on multiple dates from July through October 2020, and in violation of *N.J.S.A.* 18A:12-24.1(a) and *N.J.S.A.* 18A:12-24.1(e), Respondents have failed “to uphold and enforce the rules and regulations of the State Board of Education and [taken] private action that may compromise the” Board. In this regard, Complainant argues that Respondent Bronfeld and Respondent Dart served as the chairperson and treasurer, respectively, for “a candidate slate for election to the [Board],” and these roles “go[] well beyond the allowed ‘express yourself politically as a private citizen with regard to the endorsement of candidates in any election.’” In addition, Complainant argues that Respondent Bronfeld “raise[d] her conduct from ‘may compromise’” the Board to “‘intend[ed] to compromise’” the Board based on a “letter to the editor that call[ed] for voters to create an ‘unbeatable’ ‘majority of six’ ... which she ([Respondent] Bronfeld) shared on her ... [B]oard Facebook page” Respondent Bronfeld also “shared a letter on her [Board] Facebook page without disclaiming her role on the campaign election slate,” and did not include a disclaimer that “her actions with regard to that post” were made as a private citizen and not as a Board member. Respondent Bronfeld also shared “twelve additional posts” that also did not include the necessary disclaimers.

In Count 2, Complainant asserts that, in violation of *N.J.S.A.* 18A:12-24(b), Respondent Bronfeld and Respondent Dart served as the chairperson and treasurer, respectively, “for an election slate of three candidates to secure personal advantages (‘a majority of 6 ... and therefore[,] unbeatable’) as well [as] advantages for others, namely Mr. Hare, a friend of [Respondent] Bronfeld and Ms. Lemon, a friend of [Respondent] Dart.” Complainant also states that on January 12, 2020, and September 30, 2020, Respondent Bronfeld drafted correspondence indicating that she and Mr. Hare “were being unfairly treated by school administration and other ... [B]oard members,” thus demonstrating a “special status between Mr. Hare and [Respondent] Bronfeld” and “attempting to create an appeal for a sympathy vote for Mr. Hare.”

In Count 3, Complainant states that after attempting to “address [Respondent] Bronfeld’s actions” with her directly, but not receiving a response, Complainant wrote a “letter to the editor” that was published on October 5, 2020, and which expressed her (Complainant’s) concerns with Respondent Bronfeld’s “attempts to undermine a fair election.” According to Complainant, on October 6, 2020, she received “a spontaneous email” from Respondent Dart “remind[ing] [her] of prior donations he and his wife had made to a charity [that Complainant] oversee[s] as well as mentioning a donation his investment group had made and included a caution: ‘I am wondering if the Officers of PCS should have a similar disclosure for political activity as the IRS could disallow a charitable donation? ... Donors to [Princeton Children’s Fund (PCF)] could become concerned if they think that political activism could jeopardize their tax-deductible donation.’” Mistakenly believing that Respondent Dart was referring to a

“presidential election joke” that she (Complainant) posted on her personal Facebook page, Complainant replied to Respondent Dart (and copied the investor group), and apologized for her jokes.

Subsequent to sending her apology to Respondent Dart, Complainant learned that her letter to the editor had been removed from the newspaper’s website. When she learned this, Complainant “realized it was likely [her] letter not [her] political humor that had prompted [Respondent] Dart’s no-longer spontaneous cautionary email.”

In a second email to Complainant, Respondent Dart corrected Complainant and issued another caution, namely, “[a]s you can also see from the link ‘Violating this prohibition may result in denial or revocation of tax-exempt status and the imposition of certain excise taxes.’” Around the same time she received this message from Respondent Dart, an editor with the newspaper advised her (Complainant) that her letter had been removed because of reported inaccuracies. According to Complainant, the “inaccurate information” was that Complainant referred to Respondent Bronfeld as the “campaign ‘manager’” in her letter, when instead, she was the “campaign ‘chairperson.’” Complainant believes that Respondent Dart’s emails, along with the editor’s retraction, is an attempt by Respondent Dart “to silence [Complainant] by implying some threat to the tax-deductible status of the children’s charity” that Complainant runs. At the editor’s recommendation, Complainant rewrote her letter, which was published on October 9, 2020, and mentioned both Respondent Bronfeld and Respondent Dart as co-conspirators in an “effort to undermine the election by failing to disclose their roles.”

On October 11, 2020, Respondent Dart sent a third email to Complainant, which included a link to an opinion letter that he wrote indicating that “his conduct is permissible according to the ... Commission” and he also cited *Advisory Opinion A36-14 (A36-14)*. Respondent Dart then posted his opinion letter on Facebook without a disclaimer regarding his role on the Board, or his role as treasurer for an election slate of three candidates. Complainant asserts that Respondent Dart “is not only misleading the public with his self-exculpatory claims about his personal rights to express opinions about candidates while completely failing to mention or disclose his active role in an election campaign slate, but he is also trying to intimidate and silence” Complainant. Respondent Bronfeld then shared Respondent Dart’s “letter to the editor” on her personal Facebook page, “three times” with “no disclaimer of either her chairperson status on an election campaign slate or her role as a sitting member” of the Board. Based on this information, Complainant asserts that Respondent Bronfeld and Respondent Dart violated *N.J.S.A. 18A:12-24(a)*.

In Count 4, Complainant asserts that Respondents violated *N.J.S.A. 18A:12-24(d)* because Counts 1–3 “detail a pattern of disregard for regulations, create a substantial question about [Respondent] Bronfeld’s and [Respondent] Dart’s ability or intention to exercise their official duties with independence of judgment, and create a justifiable impression that the public trust is being violated.” Complainant continues that she does not “trust either of them, and [she] remain[s] gravely concerned that they have undermined what should have been a fair election ... with a shared intention to create an ‘unbeatable majority of 6.’”

B. *Respondent Dart's Motion to Dismiss and Allegation of Frivolous Filing*

In his Motion to Dismiss, Respondent Dart initially states that the Complaint is frivolous and is “rife with conclusory allegations, personal opinion and ad hominem attacks.” According to Respondent Dart, Complainant speculates about “what Respondent might due (sic) to secure personal advantages as well as advantages for others if certain candidates were elected to the [Board],” but does not provide any actual facts to support her allegations. Respondent Dart notes that “speculation is not a basis for any claim,” and it is “moot” because the election is over and his candidates did not win the Board election; instead, the candidates supported by Complainant won the election. Respondent Dart argues that Complainant bases her claims on actions that Respondent took as a private citizen, and which contained the necessary disclaimers (and were “completely transparent and easily visible in Complainant’s [filings]”). Respondent Dart also submits that his role as campaign treasurer was disclosed properly with the New Jersey Election Law Commission (ELEC). Respondent Dart additionally argues that Complainant does not include any factual evidence to support her “ad hominem attacks,” and her attacks are “injurious to the character and reputation of Respondents and other reputable individuals.” Respondent Dart further maintains that he “does not seek, nor would he ever accept, any unlawful advantage or benefit of any kind for he, his family or friends as recklessly alleged by Complainant”; he “takes his [o]aths very seriously”; and he and his spouse “believe strongly in volunteerism and philanthropy.” Based on the above, Respondent Dart requests that the Commission dismiss this Complaint, but does not offer any support as to why or how the Complaint is frivolous.

C. *Response to Respondent Dart's Motion to Dismiss and Allegation of Frivolous Filing*

In response to Respondent Dart’s Motion to Dismiss, Complainant notes that Respondent Dart’s “‘frivolous’ defense ... is very disheartening,” particularly because Complainant felt so strongly about filing this Complaint that she “was forced to resign” as the president of the charity that she founded in order to do so. Complainant further notes she is not asserting that Respondents are not entitled to express their opinion about “the merits of candidates” for the Board, but rather, she is asking the Commission to consider “whether sitting school board members should be allowed to orchestrate election campaigns for candidates to [a] [B]oard; and[,] if so, what disclosure about this role should be provided to the public?”

As to Respondent Dart’s claim that he “disclosed properly [his role as campaign treasurer] with [ELEC] [on] form D-2,” Complainant argues this is “patently false.” Complainant maintains in addition to form D-2, forms C-1 and R-1 are also required, and Respondent Dart provided “wildly inaccurate financial details on forms C-1.” According to Complainant, the going rate for a full-page color advertisement is “\$1,837 +\$150” and Respondent Dart placed three full-page color ads, which he noted, on form C-1 to “cost \$250 each.” Complainant further maintains that Respondent’s advertisement fee, along with the “accurate” price he listed for signage, exceeds the ELEC’s maximum contribution limit of “\$2,600.” Furthermore, Complainant notes that Respondent Dart did not file form R-1, which was due November 23, 2020. Complainant reaffirms that Respondent Dart “has not ‘disclosed properly ...’ and has done so with the intention to compromise the Board.”

Regarding Respondent Dart's claims that the Complaint was based on "conclusory allegations" and "speculation," Complainant cites "the partial summary decision regarding *Granelli, Puryear, Legere and Jones*," and contends that she "continue[s] to assert that [she] believes [Respondent] Dart has taken actions beyond the scope of his duties, that by their nature, ha[d] the potential to compromise the Board." Moreover, according to Complainant, she "cited only the one share on [Respondent] Bronfeld's [Board] Facebook page that laid out a plan for voters to elect an 'unbeatable' 'majority of 6.'" Complainant maintains that, based on Respondent Bronfeld's past postings, which "in the past 4 years" only "supported her re-election campaigns," Respondent Bronfeld's letter to the editor was the "only letter" Respondent Bronfeld posted "to her [Board] Facebook page that was not directly related to her election campaigns, ever." Therefore, Complainant asserts that based on the content of the letter, which "clearly calls for voters to undermine the [Board] by electing an 'unbeatable' 'majority of 6,'" coupled with "[u]sing a basic standard of prudence, connecting these facts exceeds mere 'speculation' on [Complainant's] part and meets the standards set forth in *Granelli*." Complainant further asserts that "attempting to use a [Board] Facebook page to promote a route to compromising the integrity of the [Board] is not in the best interest of the students they purport to (and were elected to) serve."

As to her belief that Respondent Dart attempted "to silence [Complainant] by implying some threat to the tax-deductible status of the children's charity," Complainant maintains that she has "first hand knowledge that [she] is one of at least four women who received 'advisory emails' warning about potential jeopardy to tax-deductible status of [their] charities from [Respondent] Dart." Complainant maintains that all of the women supported candidates other than Respondents' candidates and they received the correspondence from Respondent Dart after making their "support for these other candidates known publicly." Complainant notes that there are male community leaders who "openly supported other candidates" and yet, they did not receive "advice" from Respondent Dart. Complainant "suggest[s] that this appears to be a pattern of behavior" and she finds "this behavior to be threatening, as did [the] entire [B]oard." Complainant is unsure how Respondent Dart "can threaten newspapers with legal action, threaten female leaders of 501(c)(3) charities with IRS penalties, fail to disclose accurate election contributions and required forms, and simultaneously state that [the] Complaint is 'frivolous.'"

D. Respondent Bronfeld's Motion to Dismiss

In Respondent Bronfeld's Motion to Dismiss, and as to Count 1, Respondent Bronfeld argues that Complainant "has failed to include 'a copy of a final decision from any court of law or administrative agency of this State ...'" Therefore, Complainant failed to state a claim for a violation of *N.J.S.A. 18A:12-24.1(a)*. Respondent Bronfeld further argues that Complainant did not provide any evidence to support that "Respondents' roles on an election campaign or their endorsement for specific candidates in their personal capacities had the potential of compromising the Board or affecting their performances as Board members." According to Respondent Bronfeld, Complainant did not specify how the letter that Respondent Bronfeld shared "served as an endorsement for any particular candidates." The letter "simply urged voters to cast a vote which would help prevent 'splitting the vote.'" As to Respondent Bronfeld's September 15, 2020, opinion letter, Respondent Bronfeld maintains that she "specifically noted that she was writing the piece as a private citizen, not on behalf of the Board." In addition, and despite Complainant's argument, A36-14 does not require Respondent Bronfeld to disclose her

role as campaign chairperson. As for the remaining posts that Respondent Bronfeld made on her personal Facebook page, Complainant did not demonstrate how Respondent Bronfeld's personal posts were "associated with the Board or represented [Respondent] Bronfeld" as a Board member. Therefore, Complainant "failed to state a claim that Respondent Bronfeld violated *N.J.S.A.* 18A:12-24.1(e).

Regarding Count 2, and the alleged violation of *N.J.S.A.* 18A:12-24(b), Respondent Bronfeld argues, "Other than [Complainant's] sheer conclusory statement that [Respondent] Bronfeld re-circulated her January 12, 2020[,] letter to the Board to 'create an appeal for a sympathy vote for Mr. Hare,'" Complainant did not provide any evidence that Respondent Bronfeld used her position on the Board to help Mr. Hare win a seat on the Board. Therefore, Complainant has "failed to state a claim that Respondents violated *N.J.S.A.* 18A:12-24(b)."

As for the alleged violation of *N.J.S.A.* 18A:12-24(a) in Count 3, Respondent Bronfeld asserts that Complainant has not demonstrated how Respondents' roles as chairperson and treasurer for the election campaign "create a substantial conflict with the proper discharge of [their] duties." Furthermore, and although Respondent Dart has donated to Complainant's charitable organization, Complainant failed to demonstrate how his donations or his inquiries as to the tax-exempt status of the organization "would create a 'substantial conflict' for him, let alone her (Respondent Bronfeld). As such, Respondent Bronfeld asserts that Complainant has "failed to state a claim" that she violated *N.J.S.A.* 18A:12-24(a).

Regarding Count 4, and the alleged violation of *N.J.S.A.* 18A:12-24(d), Respondent Bronfeld argues that Complainant has failed "to specify which regulation [Respondents] disregarded and when or how [Respondents] failed to exercise their independence of judgment in carrying out their official duties, and how their actions created an impression that public trust was violated." Respondent Bronfeld further argues that Complainant did not provide any evidence to support how Respondents' roles as chairperson and treasurer "could reasonably be expected to prejudice their independence of judgment in their exercise of their official duties" and, therefore, Complainant has "failed to state a claim that Respondents violated *N.J.S.A.* 18A:12-24(d)" in Count 4.

For these reasons, Respondent Bronfeld requests that the Commission "dismiss the Complaint with prejudice for failure to state a claim upon which relief can be granted."

E. *Response to Respondent Bronfeld's Motion to Dismiss*

In response to Respondent Bronfeld's Motion to Dismiss, Complainant initially notes that although Respondent Bronfeld's counsel filed a Motion to Dismiss on behalf of both Respondents, it was only accepted by the Commission as to Respondent Bronfeld. As such, Complainant notes, "Any reference to [Respondent] Dart [in her filing] is only because" she cannot "differentiate the two Respondents" and this response "does not replace [her] former response, but represents [her] best effort to answer this very confusing motion entered by [counsel] on behalf of [Respondent] Bronfeld."

As to Respondent's assertion that Complainant failed to "set forth a violation of *N.J.S.A.* 18A:12-24.1(a)," because she did not include "copies of decisions," Complainant argues that she

has attached, cited to, and explained the relevance of various advisory opinions and decisions, as well as included “additional appendices” that “substantiate” her assertions.

Regarding Respondent Bronfeld’s claim that Complainant failed to provide any evidence to support a violation of *N.J.S.A.* 18A:12-24.1(e), Complainant reaffirms her argument that Respondent Bronfeld shared a post on her Board Facebook page that “laid out a plan for voters to elect an ‘unbeatable’ ‘majority of 6.’” Complainant reasserts that Respondent Bronfeld “took private action on her [Board] Facebook page contrary to the recommendations of the [Commission] and without proper disclosure suggested in A[]36-14.” Furthermore, Complainant maintains that Respondents “orchestrated the election candidate slate and spent between \$8,000 and \$10,000 combined ... with the intention to compromise the [B]oard by convincing voters to elect candidates who would vote with Respondents [] thereby creating ‘unbeatable’ ‘majority of 6.’” According to Complainant, in one of three “full-page newspaper advertisement[s],” Respondent Dart stated, “... [Board] spending decisions that I believe make our diverse community increasingly unaffordable without advancing our student achievement goals:” and then provided numerous reasons to support his “beliefs.” In a second advertisement, Complainant maintains Respondent Dart said, “We believe this facility could have been redesigned less expensively by community experts.” According to Complainant, the “we” Respondent Dart mentions “is never defined or disclosed.” Complainant argues, “Spuriously blaming the current [B]oard because ‘we’ don’t like them in full page ad after full page ad is additional evidence of [Respondents’] intention to compromise the [B]oard and the private actions taken to do just that.” Complainant reasserts that Respondent Dart “reported obviously inaccurate financial information in an effort to fool the election commission with regard to his election campaign contributions.” Complainant reaffirms that Respondents “hid the fact that they were orchestrating the election slate from the public and hid their financial investment in the same. Those facts constitute private actions taken to compromise the [B]oard.”

As to Respondent Bronfeld’s claim that Complainant failed to support the violation of *N.J.S.A.* 18A:12-24(a), Complainant “reiterates that when [Respondents] chose to hide their involvement in the election slate, that deliberate secrecy is in direct conflict with the proper discharge of duties in the public interest.” Complainant reasserts that although Respondents provided a “‘private action’ disclosure,” they should have also disclosed their campaign roles and “perhaps even the magnitude of their election campaign contributions.” Complainant further reiterates “that threatening female members of the public and leaders of 501(c)(3) charities with the potential loss of their charity 501(c)(3) tax-deductible status is not in the public interest.”

Regarding Respondent Bronfeld’s assertion that Complainant failed to support a violation of *N.J.S.A.* 18A:12-24(b), Complainant argues the letter to the editor was entitled, “Princeton [B]oard member supports candidates in accordance with School Ethics Commission.” According to Complainant, “the very title of that letter created [an] advantage to the election slate members by painting the contents of the letter as sanctioned by the [Commission] itself.” Complainant notes, “the assertion of ‘in accordance’ is false as the [Commission] has provided no specific guidance on this topic yet.” Furthermore, Complainant argues that Respondents previously worked with Mr. Hare and “knew his views on issues that would come up for vote.” Complainant restates that Respondent Bronfeld “recirculated her ‘appalled’ letter (Appendix G, FMIC)” in September 2020, nine months after it was originally released in January 2020, “falsely conveying to the public that Board officials and the former superintendent used a

separate standard in communicating with her and Mr. Hare in an attempt to elicit a sympathy vote for Mr. Hare.” Complainant reaffirms that Respondents were willing to use their role as Board members “to undermine the Board and perpetrate this idea that the public should distrust the [B]oard.”

As to Respondent Bronfeld’s claim that Complainant failed to state a claim for a violation of *N.J.S.A. 18A:12-24(d)*, Complainant reaffirms, “all of [the] points above represent their complete and abject lack of independence of judgment in the exercise of their official duties.” Complainant asserts, Respondents “appear to be conspiring together to undermine the [B]oard with no regard to how their actions violated the public trust.” Finally, Complainant notes, “[e]very time [Respondents] chose to author inaccurate and misleading information, intentionally confrontational and undermining the [B]oard they violate *N.J.S.A. 18A:12-24(d)*.” In addition, “[e]very time they emailed the public or threatened women, they violated the public trust and [*N.J.S.A. 18A:12-24(d)*].”

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 Respondents violated *N.J.S.A. 18A:12-24.1(a)* and *N.J.S.A. 18A:12-24.1(e)* as alleged in Count 1, violated *N.J.S.A. 18A:12-24(b)* as argued in Count 2, violated *N.J.S.A. 18A:12-24(a)* as contended in Count 3, and/or violated *N.J.S.A. 18A:12-24(d)* as asserted in Count 4.

B. *Jurisdiction of the Commission*

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

With the jurisdiction of the Commission in mind, to the extent that Complainant seeks a determination from the Commission that either Respondent violated any applicable ELEC statute(s) or regulation(s), failed to provide appropriate notification to ELEC, and/or failed to complete and file an ELEC form(s), the Commission advises that such determinations fall outside the scope, authority, and jurisdiction of the Commission. Nonetheless, Complainant may be able to pursue each of 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. Mootness

In his Motion to Dismiss, Respondent Dart preliminarily argues that this matter is moot because the candidates he supported in the election did not win seats on the Board. Despite Respondent Dart's argument, the Commission wishes to reiterate that, even if the candidates supported by Respondent Dart were not successful in their bid for election, that does not mean, in and of itself, that his actions could not constitute a violation(s) of the Act. Acceptance of Respondent Dart's proposition would subvert the legislative intent and purpose of the Act. Therefore, the Commission finds that because the allegations in the Complaint relate to actions taken by Respondent Dart while he was a Board member, and regardless of whether the candidates he supported were successful, the matter is not moot.

D. Alleged Code Violations

In Count 1, Complainant alleges that Respondents violated *N.J.S.A.* 18A:12-24.1(a) and *N.J.S.A.* 18A:12-24.1(e). 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.
- 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.

Count 1

Complainant alleges that, on multiple dates from July through October 2020, Respondents violated *N.J.S.A.* 18A:12-24.1(a) because they failed “to uphold and enforce the rules and regulations of the State Board of Education . . .,” by serving as the chairperson and treasurer for “a candidate slate for election to the [Board].”

Respondent Dart submits that Complainant speculates about “what Respondent might due (sic) to secure personal advantages as well as advantages for others if certain candidates were elected to the [Board],” but does not provide any actual factual evidence to support her allegations in Count 1. Respondent Dart also argues that Complainant bases her claims on actions that Respondent Dart took as a private citizen, and which contained the necessary disclaimers (and were “completely transparent and easily visible in Complainant’s [filings]”). Respondent Dart further maintains that he “does not seek, nor would he ever accept, any unlawful advantage or benefit of any kind for he, his family or friends as recklessly alleged by Complainant.”

In addition, Respondent Bronfeld maintains that Complainant “has failed to include ‘a copy of a final decision from any court of law or administrative agency of this State . . .,’” and, therefore, she failed to state a claim for a violation of *N.J.S.A.* 18A:12-24.1(a).

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 Respondents failed to enforce all laws, rules and regulations of the State Board of Education, and/or court orders pertaining to schools or that Respondents 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 Respondents violated *N.J.S.A. 18A:12-24.1(a)*. In this regard, the Commission finds that, despite being required by *N.J.A.C. 6A:28-6.4(a)(1)*, Complainant has not provided **a copy of a final decision(s)** from any court of law or other administrative agency demonstrating that Respondents (either individually or collectively) violated a specific law, rule, or regulation when they engaged in any of the acts/conduct articulated in the Complaint. Absent such a final decision, and even if the accusations may be actionable in another tribunal, the Commission finds that there is insufficient credible evidence to support a finding that Respondents violated *N.J.S.A. 18A:12-24.1(a)* in Count 1.

Complainant also argues that, on multiple dates from July through October 2020, Respondents violated *N.J.S.A. 18A:12-24.1(e)*, because they “... [took] private action that may compromise the” Board. More specifically, Respondent Bronfeld and Respondent Dart served as the chairperson and treasurer, respectively, for “a candidate slate for election to the [Board],” and these roles “go[] well beyond the allowed ‘express yourself politically as a private citizen with regard to the endorsement of candidates in any election.’” In addition, Respondent Bronfeld “raise[d] her conduct from ‘may compromise’” the Board to “‘intend[ed] to compromise’” the Board based on a “letter to the editor that call[ed] for voters to create an ‘unbeatable’ ‘majority of six’ ... which she ([Respondent] Bronfeld) shared on her ... [B]oard Facebook page”

Respondent Dart reasserts the same arguments for the alleged violation of *N.J.S.A. 18A:12-24.1(e)* as he did for the alleged violation of *N.J.S.A. 18A:12-24.1(a)* (above).

Further, Respondent Bronfeld submits that Complainant did not provide any evidence to support that “Respondents’ roles on an election campaign or their endorsement for specific candidates in their personal capacities had the potential of compromising the Board or affecting their performances as Board members.” As to Respondent Bronfeld’s September 15, 2020, opinion letter, Respondent Bronfeld maintains that she “specifically noted that she was writing the piece as a private citizen, not on behalf of the Board.” In addition, A36-14 does not require Respondent Bronfeld to disclose her role as campaign chairperson. As for the remaining posts that Respondent Bronfeld made on her personal Facebook page, Complainant did not demonstrate how Respondent Bronfeld’s personal posts were “associated with the Board or represented [Respondent] Bronfeld” as a Board member.

Pursuant to *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 Respondents made personal promises or took action beyond the scope of their duties such that, by its nature, had the potential to compromise the Board.

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

Respondents violated *N.J.S.A.* 18A:12-24.1(e). The factual allegations set forth in the Complaint detail actions/conduct undertaken by Respondents in their personal/private capacities and which were wholly unrelated to, or tied to, their positions on the Board. In addition, all written correspondence and postings made by Respondents contained the requisite disclaimers so that the reader could ascertain the capacity in which the statement was being made. To the extent that Complainant suggests that Respondents were required to include a disclaimer indicating that the message related to their role as campaign officers, the Commission advises that there is no precedent requiring Respondents to do so. As a result, the Commission finds that the alleged violation of *N.J.S.A.* 18A:12-24.1(e) in Count 1 should be dismissed.

E. *Alleged Prohibited Acts*

In the Complaint, Complainant additionally contends that Respondents violated *N.J.S.A.* 18A:12-24(b) in Count 2, violated *N.J.S.A.* 18A:12-24(a) in Count 3, and violated *N.J.S.A.* 18A:12-24(d) in Count 4. These provisions of the Act provide:

- a. No school official or member of his immediate family shall have an interest in a business organization or engage in any business, transaction, or professional activity, which is in substantial conflict with the proper discharge of his duties in the public interest;
- b. No school official shall use or attempt to use his official position to secure unwarranted privileges, advantages or employment for himself, members of his immediate family or others;
- d. No school official shall undertake any employment or service, whether compensated or not, which might reasonably be expected to prejudice his independence of judgment in the exercise of his official duties;

Count 2

Complainant asserts that, in violation of *N.J.S.A.* 18A:12-24(b), Respondent Bronfeld and Respondent Dart served as the chairperson and treasurer, respectively, “for an election slate of three candidates to secure personal advantages (‘a majority of 6 ... and therefore[,] unbeatable’) as well [as] advantages for others, namely Mr. Hare, a friend of [Respondent] Bronfeld and Ms. Lemon, a friend of [Respondent] Dart.” Further, Respondent Bronfeld drafted correspondence indicating that she and Mr. Hare “were being unfairly treated by school administration and other ... [B]oard members,” thus demonstrating a “special status between Mr. Hare and [Respondent] Bronfeld” and “attempting to create an appeal for a sympathy vote for Mr. Hare.”

Respondent Dart counters that Complainant speculates about “what Respondent might due (sic) to secure personal advantages as well as advantages for others if certain candidates were elected to the [Board],” but does not provide any actual factual evidence to support her allegations in Count 2. Respondent Dart also argues that Complainant bases her claims on actions that Respondent took as a private citizen, and which contained the necessary disclaimers (and were “completely transparent and easily visible in Complainant’s [filings]”). Respondent

Dart further maintains that he “does not seek, nor would he ever accept, any unlawful advantage or benefit of any kind for he, his family or friends as recklessly alleged by Complainant.”

In addition, Respondent Bronfeld maintains that “Other than [Complainant’s] sheer conclusory statement that [Respondent] Bronfeld re-circulated her January 12, 2020[,] letter to the Board to ‘create an appeal for a sympathy vote for Mr. Hare,’” Complainant did not provide any evidence that Respondent Bronfeld used her position on the Board to help Mr. Hare win a seat on the Board.

In order to credit the alleged violation of *N.J.S.A. 18A:12-24(b)*, the Commission must find evidence that Respondents used or attempted to use their official position to secure an unwarranted privilege, advantage or employment for themselves, members of their immediate family, or “others.”

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 Respondents violated *N.J.S.A. 18A:12-24(b)*. Because all of Respondents’ actions/conduct occurred outside the scope of their duties and responsibilities as Board members, their actions/conduct were undertaken in their personal/private capacities, and all of their written correspondence/postings contained the required disclaimers to make this fact clear to members of the public, there are insufficient facts in Count 2 to establish that Respondents used, or attempted to use, their official positions as Board members to secure an unwarranted privilege, advantage, or employment for themselves or others. Therefore, the Commission finds that the alleged violation of *N.J.S.A. 18A:12-24(b)* in Count 2 should be dismissed.

Count 3

By posting his opinion letter on Facebook without a disclaimer regarding his role on the Board and/or his role as treasurer for an election slate of three candidates, Complainant asserts that, in violation of *N.J.S.A. 18A:12-24(a)*, Respondent Dart “is not only misleading the public with his self-exculpatory claims about his personal rights to express opinions about candidates while completely failing to mention or disclose his active role in an election campaign slate, but he is also trying to intimidate and silence” Complainant. In addition, by sharing Respondent Dart’s “letter to the editor” on her personal Facebook page “three times” with “no disclaimer of either her chairperson status on an election campaign slate or her role as a sitting member” of the Board, Complainant asserts that Respondent Bronfeld violated *N.J.S.A. 18A:12-24(a)*.

Respondent Dart maintains that Complainant speculates about “what Respondent might due (sic) to secure personal advantages as well as advantages for others if certain candidates were elected to the [Board],” but does not provide any actual factual evidence to support her allegations in Count 3. Respondent Dart also argues that Complainant bases her claims on actions that Respondent took as a private citizen, and which contained the necessary disclaimers (and were “completely transparent and easily visible in Complainant’s [filings]”). Respondent Dart further maintains that he “does not seek, nor would he ever accept, any unlawful advantage or benefit of any kind for he, his family or friends as recklessly alleged by Complainant.”

Further, Respondent Bronfeld asserts that Complainant has not demonstrated how Respondents' roles as chairperson and treasurer for the election campaign "create a substantial conflict with the proper discharge of [their] duties."

To credit the alleged violation of *N.J.S.A. 18A:12-24(a)*, the Commission must find evidence that Respondents, or a member of their immediate family, have an interest in a business organization, or engaged in any business, transaction, or professional activity which was in substantial conflict with the proper discharge of their duties in the public interest.

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 Respondents violated *N.J.S.A. 18A:12-24(a)*. Complainant has not offered any facts to show how Respondents' involvement in the campaign for others (in their personal/private capacities), in and of itself, constituted a "business, transaction, or professional activity," that was in substantial conflict with Respondents' roles as Board members. Absent some credible nexus, with supporting facts, explaining how the role in the campaign substantially conflicted with Respondents' roles as Board members, the Commission finds that the alleged violation of *N.J.S.A. 18A:12-24(a)* in Count 3 should be dismissed.

Count 4

Complainant alleges that Respondents violated *N.J.S.A. 18A:12-24(d)* because Counts 1-3 "detail a pattern of disregard for regulations, create a substantial question about [Respondent] Bronfeld's and [Respondent] Dart's ability or intention to exercise their official duties with independence of judgment, and create a justifiable impression that the public trust is being violated."

Respondent Dart submits that Complainant speculates about "what Respondent might due (sic) to secure personal advantages as well as advantages for others if certain candidates were elected to the [Board]," but does not provide any actual factual evidence to support her allegations in Count 4. Respondent Dart also argues that Complainant bases her claims on actions that Respondent took as a private citizen, and which contained the necessary disclaimers (and were "completely transparent and easily visible in Complainant's [filings]"). Respondent Dart further maintains that he "does not seek, nor would he ever accept, any unlawful advantage or benefit of any kind for he, his family or friends as recklessly alleged by Complainant."

In addition, Respondent Bronfeld counters that Complainant has failed "to specify which regulation [Respondents] disregarded and when or how [Respondents] failed to exercise their independence of judgment in carrying out their official duties, and how their actions created an impression that public trust was violated." Respondent Bronfeld further argues that Complainant did not provide any evidence to support how Respondents' roles as chairperson and treasurer "could reasonably be expected to prejudice their independence of judgment in their exercise of their official duties."

In order to credit the alleged violation of *N.J.S.A. 18A:12-24(d)*, the Commission must find evidence that Respondents engaged in employment or service, regardless of whether

compensated, which might reasonably be expected to prejudice their independence of judgment in the exercise of their official duties.

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 Respondents violated *N.J.S.A.* 18A:12-24(d). Although it is clear that Complainant is not comfortable with the role that Respondents played in the candidacy of other individuals for the Board, there is nothing which *per se* prohibits them from serving in such a capacity *as long as* they do not attempt to leverage or otherwise rely upon their Board position and/or role in an unfair or unethical way. Based on the facts as presented, Respondents have not engaged in any such prohibited conduct. Furthermore, Complainant has not sufficiently explained how Respondents' advocacy (in their personal/private capacities) for the candidacy of a certain individual(s) would presently, or even prospectively, prejudice their independence of judgment in the exercise of their official duties. Therefore, the Commission finds that the alleged violation of *N.J.S.A.* 18A:12-24(d) in Count 4 should be dismissed.

Accordingly, and granting all inferences in favor of the non-moving party (Complainant), the Commission has determined to **grant** the Motions to Dismiss in their entirety because Complainant failed to plead sufficient, credible facts to support a finding that Respondents violated *N.J.S.A.* 18A:12-24.1(a) and *N.J.S.A.* 18A:12-24.1(e) as alleged in Count 1, violated *N.J.S.A.* 18A:12-24(b) as argued in Count 2, violated *N.J.S.A.* 18A:12-24(a) as contended in Count 3, and/or violated *N.J.S.A.* 18A:12-24(d) as asserted in Count 4.

IV. Request for Sanctions

In his Motion to Dismiss, Respondent Dart alleges that the Complaint is frivolous, but does not offer any explanation or basis for his position other than this conclusory assertion. In her separately filed Motion to Dismiss, Respondent Bronfeld does not contend that the Complaint is frivolous.

With the above in mind, at its meeting on February 23, 2021, the Commission considered Respondent Dart's request that the Commission find the Complaint frivolous, and impose sanctions pursuant to *N.J.S.A.* 18A:12-29(e). Despite Respondent Dart'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 March 23, 2021, the Commission voted to find the Complaint not frivolous, and to deny Respondent Dart's 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 Motions to Dismiss in their entirety because Complainant failed to plead sufficient, credible facts to support a finding that Respondents violated *N.J.S.A.* 18A:12-24.1(a) and *N.J.S.A.* 18A:12-24.1(e) as alleged in Count

1, violated *N.J.S.A.* 18A:12-24(b) as argued in Count 2, violated *N.J.S.A.* 18A:12-24(a) as contended in Count 3, and/or violated *N.J.S.A.* 18A:12-24(d) as asserted in Count 4. The Commission also voted to find that the Complaint is not frivolous, and to deny Respondent Dart's request for sanctions.

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

Robert W. Bender, Chairperson

Mailing Date: March 23, 2021

***Resolution Adopting Decision
in Connection with C65-20***

Whereas, at its meeting on February 23, 2021, the School Ethics Commission (Commission) considered the Complaint, the Motions to Dismiss in Lieu of Answer (Motions to Dismiss), Respondent Dart's allegation of frivolous filing, the responses to the Motions to Dismiss, and the response to Respondent Dart's allegation of frivolous filing submitted in connection with the above-referenced matter; and

Whereas, at its meeting on February 23, 2021, the Commission discussed granting the Motions to Dismiss in their entirety for failure to plead sufficient, credible facts to support the allegations that Respondents violated *N.J.S.A.* 18A:12-24.1(a) and *N.J.S.A.* 18A:12-24.1(e) as alleged in Count 1, violated *N.J.S.A.* 18A:12-24(b) as argued in Count 2, violated *N.J.S.A.* 18A:12-24(a) as contended in Count 3, and/or violated *N.J.S.A.* 18A:12-24(d) as asserted in Count 4; and

Whereas, at its meeting on February 23, 2021, the Commission discussed finding the Complaint not frivolous, and denying Respondent Dart's request for sanctions; and

Whereas, at its meeting on March 23, 2021, the Commission reviewed and voted to approve the within decision as accurately memorializing its actions/findings from its meeting on February 23, 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 March 23, 2021.

Kathryn A. Whalen, Director
School Ethics Commission