

***Before the School Ethics Commission***  
***Docket No.: C108-22***  
***Decision on Motion to Dismiss***

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**Filomena Laforgia,**  
***Complainant***

v.

**Vivian Yudin King,**  
**Ramapo Indian Hills Regional High School District Board of Education, Bergen County,**  
***Respondent***

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**I. Procedural History**

The above-captioned matter arises from a Complaint that was filed with the School Ethics Commission (Commission) on November 9, 2022, by Filomena Laforgia (Complainant), alleging that Vivian Yudin King (Respondent), a member of the Ramapo Indian Hills Regional High School District Board of Education (Board), violated the School Ethics Act (Act), *N.J.S.A.* 18A:12-21 *et seq.* More specifically, the Complaint avers that Respondent violated *N.J.S.A.* 18A:12-24(a), *N.J.S.A.* 18A:12-24(b), *N.J.S.A.* 18A:12-24(c), *N.J.S.A.* 18A:12-24(d), *N.J.S.A.* 18A:12-24(e), *N.J.S.A.* 18A:12-24(f), *N.J.S.A.* 18A:12-24(g), and *N.J.S.A.* 18A:12-24(h) in Counts 1-11. The Complaint additionally avers that Respondent violated *N.J.S.A.* 18A:12-24.1(a) (in Counts 1-11), *N.J.S.A.* 18A:12-24.1(d) (in Count 8), *N.J.S.A.* 18A:12-24.1(e) (in Counts 1-11), *N.J.S.A.* 18A:12-24.1(f) (in Counts 1-10), *N.J.S.A.* 18A:12-24.1(g) (in Counts 5-6, Count 8, and Count 10), and *N.J.S.A.* 18A:12-24.1(j) (in Counts 5-6, and Count 8) of the Code of Ethics for School Board Members (Code).

On November 14, 2022, the Complaint was served on Respondent via electronic mail, notifying her that ethics charges had been filed against her with the Commission, and advising that she had twenty (20) days to file a responsive pleading.<sup>1</sup> On December 19, 2022, Respondent filed a Motion to Dismiss in Lieu of Answer (Motion to Dismiss), and Complainant filed a response to the Motion to Dismiss on January 7, 2023.

The parties were notified by correspondence dated February 13, 2023, that the above-captioned matter would be discussed by the Commission at its meeting on February 21, 2023, in order to make a determination regarding the Motion to Dismiss. Following its discussion on February 21, 2023, the Commission adopted a decision at its meeting on March 21, 2023, finding that the claims in Counts 1-6 were untimely filed, and granting the Motion to Dismiss as to the

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<sup>1</sup> In order to conduct business during the Coronavirus (COVID-19) pandemic, the Commission implemented an electronic filing system, which remains a permissible method by which the Commission and parties can effectuate service of process. Consequently, service of process was effectuated by the Commission through electronic transmission only.

allegations in Counts 7-11 because Complainant failed to plead sufficient credible facts to support a finding(s) that Respondent violated the cited provisions of the Act.

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

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

In correspondence submitted with her Complaint, Complainant “humbly” requests a “timeliness waiver” as she recognizes that certain alleged violations of the Act and/or Code may “exceed the 180-day consideration period.” However, Complainant maintains the Complaint is “all-encompassing.”

In her Statement of Facts, Complainant notes the following: the Ramapo Indian Hills Regional High School District (District) represents three communities – Franklin Lakes, Oakland, and Wycoff (FLOW); Respondent was selected by the Board to serve as the Vice President in 2022; Respondent was selected by the Board President to serve as the chair of the Policy Committee, and to serve as a member of the Finance/Facilities committee in 2022; Respondent’s parents own Yudin’s Appliances, Inc. (Yudin’s); Yudin’s has two stores, one in Wyckoff and the other in Paterson; and Respondent is employed by Yudin’s.

In Respondent’s 2021 and 2022 Personal/Relative and Financial Disclosure Statements, and in response to Question #3 in Section II (Relative Information),<sup>2</sup> Respondent noted she was an employee of Yudin’s; noted that in previous years, the District had purchased appliances and air conditioning units from Yudin’s; denied being an owner or shareholder of Yudin’s; and denied that she received commission from sales. In addition, and in response to Question #1 in Section III (Financial Information), Respondent disclosed Yudin’s as a source of income for herself.

Complainant also details the following events/timeline as related to her claims:

- February 8, 2022: Respondent “abstained” from an agenda item (F2) related to “Committed Purchase Order Status Report” for November and December 2021.
- February 15, 2022: Three constituents “raised questions/concerns” regarding Respondent’s February 8, 2022, vote to “abstain.” Respondent also offered a lengthy statement “during her Board [m]ember allotted time” regarding the suggestion that Yudin’s was an “empire” and what she perceived as public attacks against her, her family, and her family’s business.
- February 28, 2022: Thomas Lambe (Lambe), the District’s Business Administrator (BA), explained that the District needed to purchase a dishwasher for the “Family Consumer Science classroom”; although not required, because the value of the dishwasher was less than \$6,000.00, the District still solicited and

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<sup>2</sup> This question asks, in relevant part: “Are you or a relative employed by, or do you or a relative receive compensation from or have an interest in, any business which is party to a contract with the local school district or charter school with which you hold office or are employed?”

- “received multi-quotes” in order to be transparent and to avoid the appearance of a conflict; and the District “selected the lowest quote,” which was Yudin’s.
- March 28, 2022: Respondent again “abstained” from certain agenda items, including the payment to Yudin’s.
  - April 25, 2022: Respondent offered statements “during her Board [m]ember allotted time” regarding Yudin’s, e.g., Yudin’s “had a long-standing relationship with the ... [B]oard long before ... I was on the Board”; and “legal has already said that there is no conflict ... .” Respondent seemingly offered statements at two different times during the Board meeting. In addition, Lambe again explained how/why the Board purchased items from Yudin’s.
  - April 26, 2022: Complainant sent a letter to the Superintendent, Board counsel, and the Board expressing concern with Respondent’s public “advertising” of her family business from the dais.
  - On or about May 10, 2022: Complainant and three other unnamed “constituents” received a “cease and desist letter from” counsel representing Yudin’s Appliances.
  - May 12, 2022: Complainant received a “Litigation Hold Letter” from counsel representing Yudin’s appliances and, contained therein, were excerpts from the letter that Complainant had sent to the Superintendent, Board counsel, and the Board on April 26, 2022.
  - May 23, 2022: Respondent “abstained” from an agenda item relating to payment of a purchase order for Yudin’s.
  - June 7, 2022: Respondent “abruptly closed” public session, although more than twenty-five (25) minutes were remaining, as Complainant was presenting advisory opinions regarding conflicts of interest.
  - July 10, 2022: Complainant submitted an Open Public Records Act (OPRA) request, which was denied on July 11, 2022, by the BA “because no matching documents exist.”
  - July 25, 2022: Respondent “abstained” from items on the agenda, but does not explain why. Per Complainant, “as part of the Finance/Facilities Committee, [Respondent] should be able to vote on ‘critical agenda items.’” Due to her abstention, it is assumed that an issue/matter must relate to Yudin’s.
  - On or about August 2022: Complainant and three other unnamed “constituents” were served with a lawsuit from Yudin’s Appliances.
  - August 15, 2022: Respondent posted an advertisement for her parents’ business on social media without using a disclaimer.
  - September 29, 2022: the Superior Court case against Complainant, and others, is dismissed.
  - October 1, 2022: Respondent posted a press release about Yudin’s (the post also states, “This is a post in my personal capacity as a resident of the FLOW area. It does not represent the views of any members of any Boards upon which I serve”).
  - October 2, 2022: Respondent posted a press release about Yudin’s, that was later taken down (the post has the same disclaimer as that in the October 1, 2022, post).

With the above in mind, and in Count 1, Complainant asserts that, on February 8, 2022, 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(f), as well as *N.J.S.A. 18A:12-24(a)*, *N.J.S.A. 18A:12-24(b)*, *N.J.S.A. 18A:12-24(c)*, *N.J.S.A. 18A:12-24(d)*, *N.J.S.A. 18A:12-24(e)*, *N.J.S.A. 18A:12-24(f)*, *N.J.S.A. 18A:12-24(g)*, and *N.J.S.A. 18A:12-24(h)* by abstaining from an agenda item (F2) related to “Committed Purchase Order Status Report” for November and December 2021. Per Complainant, Respondent’s failure to clarify her decision-making authority as an employee of Yudin’s, regarding transactions with the Board both compromises the Board and resulted in Respondent surrendering her judgment for her own gain and that of her family’s business.

In Count 2, Complainant contends that, on February 15, 2022, 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(f)*, as well as *N.J.S.A. 18A:12-24(a)*, *N.J.S.A. 18A:12-24(b)*, *N.J.S.A. 18A:12-24(c)*, *N.J.S.A. 18A:12-24(d)*, *N.J.S.A. 18A:12-24(e)*, *N.J.S.A. 18A:12-24(f)*, *N.J.S.A. 18A:12-24(g)*, and *N.J.S.A. 18A:12-24(h)* when she made a public statement, from the dais, regarding her family’s business. Per Complainant, Respondent “used her Board position for personal promises and took private action on behalf of her employe[r], which compromised the Board”; her statement and action were beyond the scope of her duties as a Board member and had the potential to compromise the Board because she did not include a disclaimer; used the schools for the gain of her family’s business; did not confine her Board action to policy making, planning, and appraisal; and her actions and statements violated the public trust.

In Count 3, Complaint argues that, on March 28, 2022, 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(f)*, as well as *N.J.S.A. 18A:12-24(a)*, *N.J.S.A. 18A:12-24(b)*, *N.J.S.A. 18A:12-24(c)*, *N.J.S.A. 18A:12-24(d)*, *N.J.S.A. 18A:12-24(e)*, *N.J.S.A. 18A:12-24(f)*, *N.J.S.A. 18A:12-24(g)*, and *N.J.S.A. 18A:12-24(h)* when she abstained from voting on certain agenda items, including a payment to Yudin’s. Complainant argues that if Respondent does not have a conflict, she should not have needed to abstain from this vote.

In Count 4, Complainant alleges that, on April 25, 2022, 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(f)*, as well as *N.J.S.A. 18A:12-24(a)*, *N.J.S.A. 18A:12-24(b)*, *N.J.S.A. 18A:12-24(c)*, *N.J.S.A. 18A:12-24(d)*, *N.J.S.A. 18A:12-24(e)*, *N.J.S.A. 18A:12-24(f)*, *N.J.S.A. 18A:12-24(g)*, and *N.J.S.A. 18A:12-24(h)* when she made a public statement, from the dais, regarding her family’s business. During her statement, Respondent noted, in part, that her family’s business had been selling appliances to the Board and other school districts for over 50 years, and Yudin’s has had a long-standing relationship with the Board. By making this statement, Complainant alleges that Respondent “used her Board position for personal promises and took private action on behalf of her employe[r], which compromised the Board”; her statement and action were beyond the scope of her duties as a Board member and had the potential to compromise the Board because she did not include a disclaimer; used the schools for the gain of her family’s business; did not confine her Board action to policy making, planning, and appraisal; and her actions and statements violated the public trust.

In Count 5, Complainant asserts that, also on April 25, 2022, Respondent violated *N.J.S.A. 18A:12-24.1(a)*, *N.J.S.A. 18A:12-24.1(e)*, *N.J.S.A. 18A:12-24.1(f)*, *N.J.S.A. 18A:12-24.1(g)*, and *N.J.S.A. 18A:12-24.1(j)*, as well as *N.J.S.A. 18A:12-24(a)*, *N.J.S.A. 18A:12-24(b)*,

*N.J.S.A. 18A:12-24(c), N.J.S.A. 18A:12-24(d), N.J.S.A. 18A:12-24(e), N.J.S.A. 18A:12-24(f), N.J.S.A. 18A:12-24(g), and N.J.S.A. 18A:12-24(h)* when she stated, “...and to speak to whether or not there has been legal advice given about Yudin’s Appliances, whether or not I am conflicted, as well as, Mr. Lambe has ad nauseum answered this question, and yet people on the Board and in the public continue to spin the narrative... .” Per Complainant, in making the statement, Respondent “used her Board position for personal promises and took private action on behalf of her employe[r], which compromised the Board”; her statement and action were beyond the scope of her duties as a Board member and had the potential to compromise the Board because she did not include a disclaimer; used the schools for the gain of her family’s business; did not confine her Board action to policy making, planning, and appraisal; and her actions and statements violated the public trust.

In Count 6, Complainant states that, on May 12, 2022, Complainant received a “Litigation Hold Letter” from the attorneys representing Yudin’s and, therein, references were made to the correspondence that Complainant sent to the Superintendent (and others) on April 26, 2022. By sharing her (Complainant’s) correspondence with Yudin’s attorney, Complainant contends that Respondent violated *N.J.S.A. 18A:12-24.1(a), N.J.S.A. 18A:12-24.1(e), N.J.S.A. 18A:12-24.1(f), N.J.S.A. 18A:12-24.1(g), and N.J.S.A. 18A:12-24.1(j)*, as well as *N.J.S.A. 18A:12-24(a), N.J.S.A. 18A:12-24(b), N.J.S.A. 18A:12-24(c), N.J.S.A. 18A:12-24(d), N.J.S.A. 18A:12-24(e), N.J.S.A. 18A:12-24(f), N.J.S.A. 18A:12-24(g) and N.J.S.A. 18A:12-24(h)*. Complainant submits that it must have been Respondent who shared the email with her parent’s attorney since the Board has no record of an OPRA request from Yudin’s attorney.

In Count 7, Complainant argues that, on May 23, 2022, 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(f)*, as well as *N.J.S.A. 18A:12-24(a), N.J.S.A. 18A:12-24(b), N.J.S.A. 18A:12-24(c), N.J.S.A. 18A:12-24(d), N.J.S.A. 18A:12-24(e), N.J.S.A. 18A:12-24(f), N.J.S.A. 18A:12-24(g), and N.J.S.A. 18A:12-24(h)* because she abstained from voting on certain agenda items, including a payment to Yudin’s. Complainant maintains that if Respondent does not have a conflict, she should not have needed to abstain from this vote.

In Count 8, Complainant alleges that, on June 7, 2022, 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), N.J.S.A. 18A:12-24.1(f), N.J.S.A. 18A:12-24.1(g), and N.J.S.A. 18A:12-24.1(j)*, as well as *N.J.S.A. 18A:12-24(a), N.J.S.A. 18A:12-24(b), N.J.S.A. 18A:12-24(c), N.J.S.A. 18A:12-24(d), N.J.S.A. 18A:12-24(e), N.J.S.A. 18A:12-24(f), N.J.S.A. 18A:12-24(g) and N.J.S.A. 18A:12-24(h)* because Respondent, as Vice President of the Board, ended the public session of the meeting early when Complainant presented the advisory opinions regarding conflicts of interest. Accordingly, Complainant alleges that Respondent utilized her Board position to prevent Complainant from raising her concerns about Respondent and her affiliation with Yudin’s.

In Count 9, Complainant asserts that, on July 25, 2022, 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(f)*, as well as *N.J.S.A. 18A:12-24(a), N.J.S.A. 18A:12-24(b), N.J.S.A. 18A:12-24(c), N.J.S.A. 18A:12-24(d), N.J.S.A. 18A:12-24(e), N.J.S.A. 18A:12-24(f), N.J.S.A. 18A:12-24(g), and N.J.S.A. 18A:12-24(h)*, when

she abstained from certain agenda items. Complainant reiterates that if Respondent does not have a conflict, she did not need to abstain from these votes.

In Count 10, Complainant asserts that, on September 29, 2022, Respondent violated *N.J.S.A.* 18A:12-24.1(a), *N.J.S.A.* 18A:12-24.1(e), *N.J.S.A.* 18A:12-24.1(f), and *N.J.S.A.* 18A:12-24.1(g), as well as *N.J.S.A.* 18A:12-24(a), *N.J.S.A.* 18A:12-24(b), *N.J.S.A.* 18A:12-24(c), *N.J.S.A.* 18A:12-24(d), *N.J.S.A.* 18A:12-24(e), *N.J.S.A.* 18A:12-24(f), *N.J.S.A.* 18A:12-24(g), and *N.J.S.A.* 18A:12-24(h), because following the dismissal of the lawsuit filed against Complainant (and others) by Yudin's, Respondent posted certain statements on social media (on October 1, 2022, and October 2, 2002). By making/posting these statements, Complainant asserts Respondent "used her Board position for personal promises and took private action on behalf of her employe[r], which compromised the Board"; her statement and action were beyond the scope of her duties as a Board member and had the potential to compromise the Board because she did not include a disclaimer; used the schools for the gain of her family's business; did not confine her Board action to policy making, planning, and appraisal; and her actions and statements violated the public trust.

In Count 11, Complainant contends that, on August 15, 2022, Respondent violated *N.J.S.A.* 18A:12-24.1(a) and *N.J.S.A.* 18A:12-24.1(e), as well as *N.J.S.A.* 18A:12-24(a), *N.J.S.A.* 18A:12-24(b), *N.J.S.A.* 18A:12-24(c), *N.J.S.A.* 18A:12-24(d), *N.J.S.A.* 18A:12-24(e), *N.J.S.A.* 18A:12-24(f), *N.J.S.A.* 18A:12-24(g), and *N.J.S.A.* 18A:12-24(h) because she posted an advertisement/promotion for Yudin's on social media without including a disclaimer that she was posting the advertisement on behalf of Yudin's as an employee, and not as a representative of the Board.

## **B. *Motion to Dismiss***

In her Motion to Dismiss, Respondent preliminarily notes that she is an employee of Yudin's; the District occasionally buys appliances from Yudin's; she has publicly disclosed her employment status at Yudin's on her Financial Disclosure Statements; she does not receive commission on sales from Yudin's; and she is not an owner or shareholder of Yudin's.

Next, Respondent argues that certain alleged violations of the Act and/or Code, namely those set forth in Counts 1-5, are beyond the 180-day filing limit and, therefore, must be dismissed. More specifically, because Complainant filed her Complaint on November 9, 2022, she "must establish that she did not acquire 'notice' of the events forming the basis of the Complaint until May 13, 2022." Because the events at-issue in Counts 1-5 occurred prior to May 13, 2022, they are untimely. However, even if the allegations in Counts 1-5 are regarded as having been timely filed, they, like the allegations in Counts 6-11, must be dismissed for failure to state a claim.

First, regarding Count 1, Count 3, Count 7, and Count 9, in which it is alleged that on February 8, 2022, March 28, 2022, May 23, 2022, and July 25, 2022, respectively, Respondent violated the Act and Code by abstaining from votes related to Board purchases from Yudin, Respondent argues: "Respondent does not have any interest in the Board doing business with Yudin, as she is only an employee of the company who does not receive commission from sales,

and is not an owner or shareholder of the company,” but abstained from the votes because of her parents interest in Yudin’s (*N.J.S.A.* 18A:12-24(a)); “Respondent abstained from voting on Board purchases from Yudin; therefore, she did not use her official position to secure any benefits that may have accrued to her parents as the owners of Yudin resulting from the transactions” (*N.J.S.A.* 18A:12-24(b)); “by abstaining from voting on Board purchases from Yudin, a business in which her parents are financially involved, Respondent did not take *any* action in her official capacity,” and did not contribute to the Board’s decision to purchase from Yudin (*N.J.S.A.* 18A:12-24(c)); “Respondent did not contribute to the Board’s decision to purchase from Yudin, her employer” and “one cannot reasonably question her independent judgment in connection with the Board’s business with the company” (*N.J.S.A.* 18A:12-24(d)); “there are no allegations in the Complaint that Respondent solicited or accepted anything from Yudin that was intended to influence action taken in her official capacity” and since Respondent did not vote on the purchases she “did not take any official action that could have been influenced” (*N.J.S.A.* 18A:12-24(e)); “because she *abstained* from voting on Board purchases from Yudin, Respondent did not take any official action that contributed to any financial gain that may have accrued to her parents as a result of the transactions that the Board approved” (*N.J.S.A.* 18A:12-24(f)); “[t]here are no allegations in the Complaint that Respondent acted as a representative of Yudin in any proceeding before or involving the Board,” and this provision of the Act “simply does not apply to the facts alleged” (*N.J.S.A.* 18A:12-24(g)); and “Respondent abstain[ed] from voting on the Board’s purchases from Yudin and therefore did not *participate* in the Board’s decision to purchase from the company” and even if she had voted, “she would not have accrued any monetary gain from the resulting transactions because she is an employee of the company, not an owner or shareholder” (*N.J.S.A.* 18A:12-24(h)).

Further, “there are no allegations in the Complaint that the Board failed to enforce any laws, Board Policies, or court orders pertaining to the District, and Complainant did not attach any final decisions or court orders to her Complaint” (*N.J.S.A.* 18A:12-24.1(a)); “[t]here are no allegations in the Complaint that Respondent made *any* promises to Yudin or took *any* private action in connection with the Board’s purchases from Yudin” because, by abstaining, she took no action (*N.J.S.A.* 18A:12-24.1(e)); and “[s]ince Respondent did not vote on the Board’s purchases from Yudin, she did not contribute to any benefit that may have accrued to her parents, the owners of Yudin, resulting from purchases” (*N.J.S.A.* 18A:12-24.1(f)).

Next, regarding Count 2 and Counts 4-5, in which it is asserted that at the February 15, 2022, Board meeting (Count 2), “Respondent essentially asked her fellow Board members to stop allowing members of the public to target her and Yudin,” and at the Board meeting on April 25, 2022 (Counts 4-5), “she explained that Yudin has had a longstanding relationship with the Board prior to her being a Board member, and that Board counsel has advised she does not have a conflict of interest based on her employment for Yudin.” Respondent further counters: “she does not have an interest in Yudin, as she is not an owner or shareholder of Yudin and does not receive commission on sales” (*N.J.S.A.* 18A:12-24(a)); the public comments made at the meetings were “in response to apparent public question and concern regarding her role as an employee for Yudin, and Yudin’s relationship with the Board, and not in an effort to secure any privilege or advantage for her parents” (*N.J.S.A.* 18A:12-24(b)); “Respondent was not acting in any matter in which she or her parents had any financial involvement when she spoke at a public Board meeting as a Board member” (*N.J.S.A.* 18A:12-24(c)); “[t]he allegations concerning

Respondent's comments do not support an inference that her employment for Yudin could compromise her independent judgment, especially where Respondent clarified that her employment for Yudin is not in conflict with her position as a Board member" (*N.J.S.A.* 18A:12-24(d)); "Respondent did not solicit or accept any 'thing of value' from Yudin that was intended to influence action taken in her capacity as a Board member" (*N.J.S.A.* 18A:12-24(e)); "since the comments were made to address negative commentary about herself and Yudin, clearly, she did not use her opportunity to speak to secure any financial benefit for herself or her parents" (*N.J.S.A.* 18A:12-24(f)); *N.J.S.A.* 18A:12-24(g) "simply does not apply to the allegations in connection with Respondent's comments because they do not relate to any proceeding before or involving the Board"; and "Respondent was not participating in a matter required to be voted upon when she spoke during the Board member comment portion of the meeting, and could not acquire any monetary gain for herself or her parents by way of her comments" (*N.J.S.A.* 18A:12-24(h)).

Moreover, "[t]here are no allegations in the Complaint, nor any final decision or court orders attached to the Complaint, demonstrating that Respondent, by making these public comments, failed to enforce laws, Board Policies, or court orders pertaining to the District" (*N.J.S.A.* 18A:12-24.1(a)); Respondent's comments "clearly did not include any promises, were well within the scope of her duties as a Board member, and could not compromise the Board" as she "addressed a matter of public concern regarding her dual role as a Board member and employee of a company that from time to time transacts business with the Board" (*N.J.S.A.* 18A:12-24.1(e)); "Respondent obviously was not using her position to acquire some benefit for herself or her parents" but, again, was addressing a matter of public concern (*N.J.S.A.* 18A:12-24.1(f)); "Respondent did not disclose any confidential information or inaccurate public information" and, instead, was discussing public comments and behaviors that occurred at Board meetings as well as on Facebook (*N.J.S.A.* 18A:12-24.1(g)); and the Complaint "does not contain any allegations regarding any personnel matters at all" (*N.J.S.A.* 18A:12-24.1(h)).

Regarding Count 6, and the May 12, 2022, litigation hold letter that was sent to Complainant (and others), and referenced comments that Complainant made in correspondence to the Superintendent, Board attorney, and the Board on April 26, 2022, Respondent counters that this Count "does not assert any allegations involving Respondent," and only alleges "actions on the part of the law firm representing" Yudin's and the Board Secretary (who responded to the OPRA request). Even if the suggestion is that Respondent provided Yudin's counsel with Complainant's April 26, 2022, correspondence, Respondent argues: these facts, even if true, do not suggest that she has an interest in any business that is in substantial conflict with the proper discharge of her duties (*N.J.S.A.* 18A:12-24(a)); these facts, even if true, do not suggest that Respondent used her official position to secure any privileges or advantages for her parents, especially since "the letter became a government record which is publicly accessible under the OPRA" when it was sent to the Board itself" (*N.J.S.A.* 18A:12-24(b)); "If Respondent, as a recipient of Complainant's letter ... gave the letter to Yudin's attorney in connection with a dispute involving Complainant and other individuals who are not Board members, then she did not take any *official* action, and therefore her action would not fall within the scope of *N.J.S.A.* 18A:12-24(c)"; there are no allegations which would "allow a reasonable expectation that Respondent's employment for Yudin could prejudice her independent judgment in the exercise of her official duties," especially since Respondent, as a direct recipient of the letter, was not

prohibited from sharing it (*N.J.S.A.* 18A:12-24(d)); providing Complainant’s letter to Yudin’s attorney “does not suggest that she solicited or accepted any ‘thing of value’ from anyone intended to influence her in the discharge of her official duties” (*N.J.S.A.* 18A:12-24(e)); “[e]ven though Respondent received Complainant’s letter in her Board member capacity, she was not prohibited from disclosing the letter to anyone else, because it is not confidential” and also there was no suggestion that she may have shared it to secure financial gain (*N.J.S.A.* 18A:12-24(f)); “[b]y providing Complainant’s letter to her parents’ attorney who initiated a lawsuit on behalf of Yudin against Complainant and others who are not Board members, Respondent did not act as a representative for her parents or Yudin in any matter *pending before or involving the Board*” (*N.J.S.A.* 18A:12-24(g)); and the allegations in the Complaint do not “trigger” a potential violation of *N.J.S.A.* 18A:12-24(h).

In addition, “[t]here are no allegations in the Complaint, nor any final agency decisions or court orders attached to the Complaint, demonstrating that Respondent failed to enforce any laws, Board Policies, or court orders pertaining to the District” (*N.J.S.A.* 18A:12-24.1(a)); “[i]f Respondent shared a letter addressed to her that is a government record, then she did not make any personal promises to anyone, nor take any action that could compromise the Board” (*N.J.S.A.* 18A:12-24.1(e)); Respondent “did not acquire some benefit for her parents, when the letter was cited in a litigation hold letter in connection with anticipated litigation to stop alleged libelous statements” (*N.J.S.A.* 18A:12-24.1(f)); the letter shared with Yudin’s attorney is a publicly accessible government document and, therefore, is not confidential (*N.J.S.A.* 18A:12-24.1(g)); and there are no allegations in the Complaint that Respondent failed to refer any complaint to the Superintendent or that the Board acted on any complaint at any meeting prior to exhausting administrative solutions” (*N.J.S.A.* 18A:12-24.(j)).

As for Count 8, in which it is alleged that Respondent violated multiple provisions of the Act and Code when she closed public session early, Respondent counters that Complainant offered public comment for far longer than permitted by the Board’s policies and regulations, and repeatedly requested additional time (which was denied). Because no other members of the public were present, Respondent made a motion to close public comment. Nonetheless, and as to the alleged violations of the Act and Code, Respondent argues: she did not violate any Board Policy or procedure when she moved to close the public comment portion of the meeting (*N.J.S.A.* 18A:12-24(a)); “By moving to close the public comment portion of the meeting after all public comments concluded, Respondent did not secure any privilege or advantage for herself or her parents” (*N.J.S.A.* 18A:12-24(b)), nor was “the motion before a matter with which Respondent, her parents, or Yudin had any financial involvement” (*N.J.S.A.* 18A:12-24(c)); “Respondent’s motion does not suggest that she was prejudiced in her independent judgment in the exercise of her duties by virtue of her employment for Yudin” (*N.J.S.A.* 18A:12-24(d)); “[b]y voting to close the public comment portion of the meeting, Respondent clearly did not solicit or accept any ‘thing of value’ intended to influence her in the discharge of her official duties” (*N.J.S.A.* 18A:12-24(e)); nor “did she secure, or attempt to secure, any financial gain for herself or Yudin” (*N.J.S.A.* 18A:12-24(f)); “Respondent was not acting as a representative for anyone other than the Board at the time she made her motion” (*N.J.S.A.* 18A:12-24(g)); and this matter (a motion) was “not a matter which resulted, or could have resulted, in any monetary gain accruing to Respondent or Yudin” (*N.J.S.A.* 18A:12-24(h)).

Further, “by voting to close the public comment portion of the meeting after all members of the public were afforded an opportunity to speak, [Respondent] acted squarely in accordance with Board Policy and procedure” (*N.J.S.A.* 18A:12-24.1(a)); “there are simply no allegations in the Complaint that Respondent administered the schools in any way” (*N.J.S.A.* 18A:12-24.1(d)); Respondent did not make any promises, take action beyond the scope of her duties, or acquire a benefit for her parents (*N.J.S.A.* 18A:12-24.1(e)); and “there are no allegations in the Complaint that Respondent failed to refer any complaint to the Superintendent or that the Board acted on any complaint at any meeting prior to exhausting administrative solutions” (*N.J.S.A.* 18A:12-24.1(j)).

Concerning Counts 10-11, and the posts on Respondent’s social media page on August 15, 2022 (Count 11), and September 29, 2022 (Count 10), both of which state that the posts do not represent the views or opinions of the Board, Respondent submits: the posts do not suggest that Respondent’s employment for Yudin is in substantial conflict with the proper discharge of her Board duties, and the posts were not in her official capacity (*N.J.S.A.* 18A:12-24(a)); by making these posts in her individual/personal capacity (and including a disclaimer), and not in her capacity as a Board member, Respondent did not use her official position to secure any privileges or advantages for her parents or Yudin (*N.J.S.A.* 18A:12-24(b)), or act in her official capacity (*N.J.S.A.* 18A:12-24(c)); “since Respondent is only an employee of Yudin who does not receive commission, and is not an owner or shareholder of the company, there can be no reasonable expectation that her employment could prejudice her independent judgment in the exercise of her official duties” (*N.J.S.A.* 18A:12-24(d)); “Respondent’s Facebook posts are not evidence that she solicited or accepted any ‘thing of value’ intended to influence her in the exercise of her duties” (*N.J.S.A.* 18A:12-24(e)); in making these posts in her individual capacity, Respondent did not use her official position to secure any financial gain for Yudin (*N.J.S.A.* 18A:12-24(f)); and there are no allegations in Counts 10 or 11 regarding any matter pending before or involving the Board or regarding Respondent’s participation in any matter required to be voted on and, as such, violations of *N.J.S.A.* 18A:12-24(g) and *N.J.S.A.* 18A:12-24(h) are not implicated.

Moreover, there are no “allegations and attachments demonstrating” that Respondent, by making these posts, failed to enforce any law, Board Policy, or court order (*N.J.S.A.* 18A:12-24.1(a)); “Respondent’s posts, made on her personal Facebook page and in her personal capacity, compromised the Board” (*N.J.S.A.* 18A:12-24.1(e)); Respondent used her official capacity for the gain of her parents and their company” as the posts are appropriately disclaimed as being in Respondent’s personal/individual capacity (*N.J.S.A.* 18A:12-24.1(f)); and “Respondent shared any information in these posts that was either confidential, inaccurate, or not publicly accessible by other means” (*N.J.S.A.* 18A:12-24.1(g)).

For the foregoing reasons, Respondent requests that the Commission dismiss the Complaint in its entirety because, even if the factual allegations are true, Complainant cannot establish a violation of the Act.

### C. *Response to Motion to Dismiss*

In response to the Motion to Dismiss, Complainant acknowledges that some of the events referenced in her Complaint are time-barred; however, Complainant contends that the word, “shall” in *N.J.S.A.* 6A:28-6.5 (“Complaints shall be filed within 180 days of the notice of the events...”) is not necessarily compulsory since “shall” can also mean “may.” Accordingly, Complainant argues that the allegations should not necessarily be dismissed, and requests a timeliness waiver, as the entirety of her Complaint should not be overlooked.

Complainant reasserts Respondent violated *N.J.S.A.* 18A:12-24(a) because she acted as an employee of Yudin’s, rather than a Board member, in substantial conflict with the proper discharge of her duties. Complainant states that the exact nature of Respondent’s role or duties as a Yudin’s employee is still unclear. Complainant questions whether Respondent has any role in answering the District’s calls on appliances, and whether Respondent is involved in setting the pricing for the appliances. Complainant reiterates that Respondent violated *N.J.S.A.* 18A:12-24(b) because she abstained from voting on the purchase orders and, if she really was not conflicted, she should not have abstained; violated *N.J.S.A.* 18A:12-24(c) because her objectivity or independent judgment is questionable because her parents own Yudin’s; violated *N.J.S.A.* 18A:12-24(d) because her independent judgment in relation to business by/between the Board and Yudin’s is questionable and, as an officer of the Board, had a direct line of communication to the Superintendent; violated *N.J.S.A.* 18A:12-24(e) because she failed to maintain her independent judgment and objectivity when she made various statements at the February 15, 2022, and April 25, 2022, Board meetings where she elaborated on the history of Yudin’s, defended Yudin’s against what she perceived to be “hurtful” comments, affirmed her status as an employee of Yudin’s, and attacked the public; violated *N.J.S.A.* 18A:12-24(a), *N.J.S.A.* 18A:12-24(f), *N.J.S.A.* 18A:12-24.1(e), and *N.J.S.A.* 18A:12-24.1(f) because there is no real means to determine if Respondent is being truthful in her assertions that she has no ownership interest in Yudin’s; and violated *N.J.S.A.* 18A:12-24(g) because she serves as an elected representative of the Board, and she is an employee of Yudin’s. Per Complainant, Respondent’s dual roles (as a Board member and employee of Yudin’s) may or may not result in a direct conflict at any given time. Complainant also maintains that Respondent violated *N.J.S.A.* 18A:12-24.1(a) because there is a final decision pending in Bergen County Superior Court.

As to the events that occurred at the February 15, 2022, and April 25, 2022, Board meetings, Complainant reaffirms Respondent violated *N.J.S.A.* 18A:12-24(b), *N.J.S.A.* 18A:12-24(c), *N.J.S.A.* 18A:12-24(d), *N.J.S.A.* 18A:12-24(f), and *N.J.S.A.* 18A:12-24(g) when she commented using pronouns such as “our, me, we, my, I, father, grandparents” when speaking about Yudin’s, and addressing the public.

Complainant reaffirms that Respondent violated *N.J.S.A.* 18A:12-24(a), *N.J.S.A.* 18A:12-24(b), *N.J.S.A.* 18A:12-24(c), *N.J.S.A.* 18A:12-24(e), *N.J.S.A.* 18A:12-24(f), *N.J.S.A.* 18A:12-24(g), and *N.J.S.A.* 18A:12-24(h) by providing Yudin’s attorney with Complainant’s email which was referenced in the Litigation Hold Letter. Complainant notes that although the email was a public record, Respondent should not have given the email to the attorney since OPRA was the proper method for Yudin’s attorney to obtain the email.

As to the allegations related to the June 7, 2022, Board meeting, Complainant reaffirms Respondent violated *N.J.S.A. 18A:12-24(a)*, *N.J.S.A. 18A:12-24(b)*, *N.J.S.A. 18A:12-24(c)*, *N.J.S.A. 18A:12-24(e)*, *N.J.S.A. 18A:12-24(f)*, *N.J.S.A. 18A:12-24(g)*, and *N.J.S.A. 18A:12-24(h)* when she ended the public comment portion early while Complainant was reading advisory opinions from the Commission regarding conflicts of interest.

Finally, Complainant reasserts that Respondent violated *N.J.S.A. 18A:12-24(a)*, *N.J.S.A. 18A:12-24(b)*, *N.J.S.A. 18A:12-24(c)*, *N.J.S.A. 18A:12-24(d)*, *N.J.S.A. 18A:12-24(e)*, *N.J.S.A. 18A:12-24(f)*, and *N.J.S.A. 18A:12-24(g)* when she posted an advertisement/promotion on August 15, 2022, for Yudin's on Facebook, and a post disparaging the Superior Court judgment dismissing claims against Complainant for libel, tortious interference, and false light.

### **III. Analysis**

#### **A. Standard for Motion to Dismiss**

In determining whether to grant a Motion to Dismiss, the Commission shall review the facts in the light most favorable to the non-moving party (Complainant), and determine whether the allegation(s), if true, could establish a violation(s) of the Act. Unless the parties are otherwise notified, a Motion to Dismiss and any response is reviewed by the Commission on a summary basis. *N.J.A.C. 6A:28-8.1 et seq.* Thus, the question before the Commission is whether Complainant has pled sufficient facts which, if true, could support a finding that Respondent violated *N.J.S.A. 18A:12-24(a)* (in Counts 1-11), *N.J.S.A. 18A:12-24(b)* (in Counts 1-11), *N.J.S.A. 18A:12-24(c)* (in Counts 1-11), *N.J.S.A. 18A:12-24(d)* (in Counts 1-11), *N.J.S.A. 18A:12-24(e)* (in Counts 1-11), *N.J.S.A. 18A:12-24(f)* (in Counts 1-11), *N.J.S.A. 18A:12-24(g)* (in Counts 1-11), *N.J.S.A. 18A:12-24(h)* (in Counts 1-11), *N.J.S.A. 18A:12-24.1(a)* (in Counts 1-11), *N.J.S.A. 18A:12-24.1(d)* (in Count 8), *N.J.S.A. 18A:12-24.1(e)* (in Counts 1-11), *N.J.S.A. 18A:12-24.1(f)* (in Counts 1-10), *N.J.S.A. 18A:12-24.1(g)* (in Counts 5-6, Count 8, and Count 10), and/or *N.J.S.A. 18A:12-24.1(j)* (in Counts 5-6, and Count 8).

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

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

With the jurisdiction of the Commission in mind, to the extent that Complainant seeks a determination from the Commission that Respondent's conduct/actions may have violated the Open Public Records Act, the Open Public Meetings Act, Robert's Rules of Order, and/or a Board policy or regulation, the Commission advises that such determinations fall beyond the scope, authority, and jurisdiction of the Commission. Although Complainant may be able to pursue a cause of action(s) in the appropriate tribunal, the Commission is not the appropriate entity to adjudicate those claims. Accordingly, those claims are *dismissed*.

### C. *Alleged Untimeliness*

In her Motion to Dismiss, Respondent argues that the alleged violations of the Act set forth in Counts 1-5 are beyond the 180-day filing limit and must be dismissed. According to Respondent, because Complainant filed her Complaint on November 9, 2022, she “must establish that she did not acquire ‘notice’ of the events forming the basis of the Complaint until May 13, 2022.” Because the events at-issue in Counts 1-5 occurred prior to May 13, 2022, and Complainant has not offered a credible explanation as to why she was unaware of the events preceding May 13, 2022, until May 13, 2022, Respondent argues that Counts 1-5 must be dismissed as untimely.

In her response to the Motion to Dismiss, Complainant concedes that some of the events referenced in her Complaint are time-barred. However, Complainant contends that the word, “shall” in *N.J.A.C. 6A:28-6.5* (“Complaints shall be filed within 180 days of the notice of the events...”) is not necessarily compulsory, and “shall” can also mean “may.” Accordingly, Complainant argues that the allegations should not necessarily be dismissed, and requests a timeliness waiver as the entirety of her Complaint should not be overlooked.

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).

In this case, Complainant filed her Complaint on November 9, 2022, and one hundred eighty (180) days prior thereto is May 13, 2022.

With the above in mind, and 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.

The Commission recognizes that limitation periods of this type serve to discourage dilatoriness and provide a measure of repose in the conduct of school affairs. *Kaprow v. Berkley Township Bd. of Educ.*, 131 N.J. 571, 587 (1993). Thus, “notice of the alleged violation” must be interpreted in a manner that anticipates the reasonable diligence of complainant(s). In addressing potential violations of the Act, the Commission must balance the public’s interest in knowing of potential violations against the important policy of repose and a respondent’s right to fairness. The time limitations set forth in the regulations must be enforced if the Commission is to operate in a fair and consistent manner. *Phillips v. Streckenbein et al., Edgewater Park Bd. of Educ., Burlington County*, C19-03 (June 24, 2003).

After review, the Commission finds that there is not a credible basis upon which to find that Complainant was unaware of Respondent's actions/conduct until a date(s) other than when they occurred. Although the Commission recognizes that the regulatory time period may be relaxed, in its discretion, in any case where strict adherence may be deemed inappropriate or unnecessary or may result in injustice, it finds no extraordinary circumstances in the within matter that would compel relaxation. Critical to the Commission's determination was that, as evidenced by the substance of her letter to the Board on April 26, 2022, Complainant was aware of Respondent's purported "conflict of interest" and her "public advertisement" of Yudin's from the dais. Despite her indisputable knowledge of the events that occurred prior to May 13, 2022, including her belief that Respondent's conduct violated the Act, Complainant waited until November 9, 2022, to initiate the above-captioned matter. Consequently, the stated violations of the Act set forth in Counts 1-6, not just those in Counts 1-5 as argued by Respondent, are time barred and, therefore, *dismissed*.

#### **D. *Alleged Violations of the Act***

In the remaining Counts of the Complaint (Counts 7-11), Complainant asserts that, based on the conduct more fully detailed above, Respondent violated *N.J.S.A. 18A:12-24(a)*, *N.J.S.A. 18A:12-24(b)*, *N.J.S.A. 18A:12-24(c)*, *N.J.S.A. 18A:12-24(d)*, *N.J.S.A. 18A:12-24(e)*, *N.J.S.A. 18A:12-24(f)*, *N.J.S.A. 18A:12-24(g)*, and *N.J.S.A. 18A:12-24(h)*, and these provisions state:

- a. No school official or member of her 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 her duties in the public interest;
- b. No school official shall use or attempt to use her official position to secure unwarranted privileges, advantages or employment for herself, members of her immediate family or others;
- c. No school official shall act in her official capacity in any matter where he, a member of her immediate family, or a business organization in which she has an interest, has a direct or indirect financial involvement that might reasonably be expected to impair her objectivity or independence of judgment. No school official shall act in her official capacity in any matter where she or a member of her immediate family has a personal involvement that is or creates some benefit to the school official or member of her immediate family;
- d. No school official shall undertake any employment or service, whether compensated or not, which might reasonably be expected to prejudice her independence of judgment in the exercise of her official duties;
- e. No school official, or member of her immediate family, or business organization in which she has an interest, shall solicit or accept any gift, favor, loan, political contribution, service, promise of future employment, or other thing

of value based upon an understanding that the gift, favor, loan, contribution, service, promise, or other thing of value was given or offered for the purpose of influencing him, directly or indirectly, in the discharge of her official duties. This provision shall not apply to the solicitation or acceptance of contributions to the campaign of an announced candidate for elective public office, if the school official has no knowledge or reason to believe that the campaign contribution, if accepted, was given with the intent to influence the school official in the discharge of her official duties;

f. No school official shall use, or allow to be used, her public office or employment, or any information, not generally available to the members of the public, which she receives or acquires in the course of and by reason of her office or employment, for the purpose of securing financial gain for herself, any member of her immediate family, or any business organization with which she is associated;

g. No school official or business organization in which she has an interest shall represent any person or party other than the school board or school district in connection with any cause, proceeding, application or other matter pending before the school district in which she serves or in any proceeding involving the school district in which she serves or, for officers or employees of the New Jersey School Boards Association, any school district. This provision shall not be deemed to prohibit representation within the context of official labor union or similar representational responsibilities;

h. No school official shall be deemed in conflict with these provisions if, by reason of her participation in any matter required to be voted upon, no material or monetary gain accrues to her as a member of any business, profession, occupation or group, to any greater extent than any gain could reasonably be expected to accrue to any other member of that business, profession, occupation or group;

To credit a violation(s) of *N.J.S.A. 18A:12-24(a)*, Complainant must provide sufficient factual evidence that Respondent, or a member of her immediate family, has 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 her duties in the public interest.

In order to credit a violation(s) of *N.J.S.A. 18A:12-24(b)*, Complainant must provide sufficient factual evidence that Respondent used or attempted to use her official position to secure an unwarranted privilege, advantage or employment for herself, members of her immediate family, or "others."

To credit a violation(s) of *N.J.S.A. 18A:12-24(c)*, Complainant must provide sufficient factual evidence that Respondent acted in her official capacity in a matter where she, or a member of her immediate family, had a direct or indirect financial involvement that might

reasonably be expected to impair her objectivity, or in a matter where she had a personal involvement that created some benefit to her, or to a member of her immediate family.

In order to credit a violation(s) of *N.J.S.A.* 18A:12-24(d), Complainant must provide sufficient factual evidence that Respondent engaged in employment or service, regardless of whether compensated, which might reasonably be expected to prejudice her independence of judgment in the exercise of her official duties.

To credit a violation(s) of *N.J.S.A.* 18A:12-24(e), Complainant must provide sufficient factual evidence that Respondent, a member of her immediate family, or a business organization in which she has an interest, solicited or accepted a gift, favor, loan, political contribution, service, promise of future employment, or other thing of value based upon an understanding that the gift, favor, loan, contribution, service, promise, or other thing of value was given or offered for the purpose of influencing her, directly or indirectly, in the discharge of her official duties.

In order to credit a violation(s) of *N.J.S.A.* 18A:12-24(f), Complainant must provide sufficient factual evidence that Respondent used her public employment, or any information not generally available to the public, and which she received in the course of and by reason of her employment, for the purpose of securing financial gain for herself, her business organization, or a member of her immediate family.

To credit a violation(s) of *N.J.S.A.* 18A:12-24(g), Complainant must provide sufficient factual evidence that Respondent or a business organization in which she has an interest represented any person or party other than the school board or school district in connection with any cause, proceeding, application or other matter pending before the school district in which she serves or in any proceeding involving the school district in which she serves.

In order to credit a violation(s) of *N.J.S.A.* 18A:12-24(h), Complainant must provide sufficient factual evidence that Respondent participated in a matter required to be voted upon, and a material or monetary gain accrued to her as a member of a business to an extent greater than could reasonably be expected to accrue to any other member of that business, profession, occupation or group.

Complainant further submits that Respondent violated *N.J.S.A.* 18A:12-24.1(a) (in Counts 7-11), *N.J.S.A.* 18A:12-24.1(d) (in Count 8), *N.J.S.A.* 18A:12-24.1(e) (in Counts 7-11), *N.J.S.A.* 18A:12-24.1(f) (in Counts 7-10), *N.J.S.A.* 18A:12-24.1(g) (in Count 8 and Count 10), and *N.J.S.A.* 18A:12-24.1(j) (in Count 8), and these provisions provide:

a. I will uphold and enforce all laws, rules and regulations of the State Board of Education, and court orders pertaining to schools. Desired changes shall be brought about only through legal and ethical procedures.

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

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

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

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

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.

Pursuant to *N.J.A.C.* 6A:28-6.4(a), a violation(s) of *N.J.S.A.* 18A:12-24.1(a), *N.J.S.A.* 18A:12-24.1(d), *N.J.S.A.* 18A:12-24.1(e), *N.J.S.A.* 18A:12-24.1(f), and *N.J.S.A.* 18A:12-24.1(g) need to be supported by certain factual evidence, more specifically:

1. Factual evidence of a violation of *N.J.S.A.* 18A:12-24.1(a) shall include a copy of a final decision from any court of law or administrative agency of this State demonstrating that Respondent failed to enforce all laws, rules and regulations of the State Board of Education, and/or court orders pertaining to schools or that Respondent brought about changes through illegal or unethical procedures.

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

5. Factual evidence of a violation of *N.J.S.A.* 18A:12-24.1(e) shall include evidence that Respondent made personal promises or took action beyond the scope of her duties such that, by its nature, had the potential to compromise the board.

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

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

10. Factual evidence of a violation of *N.J.S.A.* 18A:12-24.1(j) shall include evidence that the respondent(s) 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.

With the dismissal of Counts 1-6, the remaining conduct/action that, as asserted by Complainant, violates the Act includes: abstaining from an agenda item relating to payment of a purchase order for Yudin's on May 23, 2022 (Count 7); "abruptly" closing public session as Complainant was presenting information during public comment on June 7, 2022 (Count 8); abstaining from an agenda item on July 25, 2022 (Count 9); and posting information on social media on August 15, 2022 (Count 11), and September 29, 2022 (Count 10).

First, and regarding the alleged violations of *N.J.S.A.* 18A:12-24.1(a) in Counts 7-11, the Commission finds that although required by *N.J.A.C.* 6A:28-6.4(a)(1) to substantiate a violation(s) of *N.J.S.A.* 18A:12-24.1(a), Complainant has not provided **a copy of a final decision** from any court of law or other administrative agency demonstrating or finding that Respondent violated any specific law(s), rule(s), or regulation(s) of the State Board of Education and/or court orders pertaining to schools, or that she brought about changes through illegal or unethical procedures, when she engaged in any of the actions/conduct set forth in Counts 7-11 of the Complaint. In the absence of the required final decision(s), and based on the current record, the Commission is constrained to dismiss the alleged violations of *N.J.S.A.* 18A:12-24.1(a) in Counts 7-11.

Second, with regard to Respondent's decision to abstain from certain agenda items on May 23, 2022 (Count 7), and July 25, 2022 (Count 9), the Commission finds that even if she did abstain from voting, her abstentions would not, under any set of circumstances, support a finding(s) that she violated *N.J.S.A.* 18A:12-24(a), *N.J.S.A.* 18A:12-24(b), *N.J.S.A.* 18A:12-24(c), *N.J.S.A.* 18A:12-24(d), *N.J.S.A.* 18A:12-24(e), *N.J.S.A.* 18A:12-24(f), *N.J.S.A.* 18A:12-24(g), *N.J.S.A.* 18A:12-24(h), *N.J.S.A.* 18A:12-24.1(e), and/or *N.J.S.A.* 18A:12-24.1(f). It is clear from the record that (1) Respondent's family owned a business in the community, (2) her family's business conducted business with the District (both in the past and presently), and (3) Respondent was employed by her family's business. Consequently, Respondent had a clear conflict of interest that necessitated her abstention from certain agenda items, including those directly and indirectly involved with her family's business. Despite's Complainant's insinuation

to the contrary, Respondent's decision to abstain from these matters was the appropriate course of action and, had she failed to do so, Respondent would *then* have violated the Act. Because Respondent appropriately abstained from voting, violations of *N.J.S.A.* 18A:12-24(a), *N.J.S.A.* 18A:12-24(b), *N.J.S.A.* 18A:12-24(c), *N.J.S.A.* 18A:12-24(d), *N.J.S.A.* 18A:12-24(e), *N.J.S.A.* 18A:12-24(f), *N.J.S.A.* 18A:12-24(g), *N.J.S.A.* 18A:12-24(h), *N.J.S.A.* 18A:12-24.1(e), and/or *N.J.S.A.* 18A:12-24.1(f) are not sustainable, and must be dismissed.

Third, even if Respondent did "abruptly" end public comment on June 7, 2022 (Count 8), while Complainant was speaking, her motion is not, in and of itself, sufficient to establish a violation(s) of *N.J.S.A.* 18A:12-24(a), *N.J.S.A.* 18A:12-24(b), *N.J.S.A.* 18A:12-24(c), *N.J.S.A.* 18A:12-24(d), *N.J.S.A.* 18A:12-24(e), *N.J.S.A.* 18A:12-24(f), *N.J.S.A.* 18A:12-24(g), *N.J.S.A.* 18A:12-24(h), *N.J.S.A.* 18A:12-24.1(d), *N.J.S.A.* 18A:12-24.1(e), *N.J.S.A.* 18A:12-24.1(f), *N.J.S.A.* 18A:12-24.1(g), and/or *N.J.S.A.* 18A:12-24.1(j). In its review, the Complaint, and Count 8 in particular, is wholly devoid of any possible facts and circumstances which could show that by making a motion to end public comment, even if early, and even if a member of the public was speaking, would violate the Act. Although Respondent's actions may have violated a Board policy, Board regulation, Robert's Rules of Order, or the Open Public Meetings Act, Respondent's conduct was not unethical or otherwise violative of the Act. As such, violations of *N.J.S.A.* 18A:12-24(a), *N.J.S.A.* 18A:12-24(b), *N.J.S.A.* 18A:12-24(c), *N.J.S.A.* 18A:12-24(d), *N.J.S.A.* 18A:12-24(e), *N.J.S.A.* 18A:12-24(f), *N.J.S.A.* 18A:12-24(g), *N.J.S.A.* 18A:12-24(h), *N.J.S.A.* 18A:12-24.1(d), *N.J.S.A.* 18A:12-24.1(e), *N.J.S.A.* 18A:12-24.1(f), *N.J.S.A.* 18A:12-24.1(g), and/or *N.J.S.A.* 18A:12-24.1(j) are not cognizable, and must be dismissed.

Finally, and with regard to Respondent's social media post on August 15, 2022 (Count 11), although it does *not* have a clear and prominent disclaimer clarifying the capacity in which she is speaking (i.e., in her personal or official capacity), the Commission finds that a reasonable member of the public could *not* possibly perceive Respondent as speaking in her official capacity, or pursuant to her official duties as a member of the Board because, on its face, the substance of the post does not have any correlation or relationship to the business of the Board and/or its operations. Moreover, Respondent does not reference or otherwise mention her Board position or title, or the Board itself, when advising her Facebook "community" about "great sales" at Yudin's.

As for social media's post on September 29, 2022 (Count 10), it *does* have a clear and prominent disclaimer which states, "\*This is a post in my personal capacity as a resident of the FLOW area. It does not represent the views of any members of any Boards upon which I serve." Although Respondent did not utilize the disclaimer recommended by the Commission, namely "this endorsement is [Board Member's Name] personal one, and not as a member of the [Township] Board of Education, nor is the endorsement on behalf of the entire Board," or "***THE FOLLOWING STATEMENTS ARE MADE IN MY CAPACITY AS A PRIVATE CITIZEN, AND NOT IN MY CAPACITY AS A BOARD MEMBER. THESE STATEMENTS ARE ALSO NOT REPRESENTATIVE OF THE BOARD OR ITS INDIVIDUAL MEMBERS, AND SOLELY REPRESENT MY OWN PERSONAL OPINIONS,***" the Commission finds that the disclaimer used is sufficiently clear, and that a reasonable member of the public could *not* possibly perceive Respondent as speaking in her official capacity, or pursuant to her official

duties as a member of the Board. See [Advisory Opinion A36-14 \(October 29, 2014\)](#), and [I/M/O Treston, Randolph Township Board of Education, Morris County, Docket No. C71-18](#).

Because the Commission finds that neither Respondent's August 15, 2022 (Count 11), nor her September 29, 2022 (Count 10), social media posts were made in her official capacity as a member of the Board, the Commission finds that even if the facts as contended in those Counts are proven true by sufficient credible evidence, they would not support a finding(s) that Respondent violated *N.J.S.A. 18A:12-24(a)*, *N.J.S.A. 18A:12-24(b)*, *N.J.S.A. 18A:12-24(c)*, *N.J.S.A. 18A:12-24(d)*, *N.J.S.A. 18A:12-24(e)*, *N.J.S.A. 18A:12-24(f)*, *N.J.S.A. 18A:12-24(g)*, *N.J.S.A. 18A:12-24(h)*, *N.J.S.A. 18A:12-24.1(e)* (Counts 10-11), *N.J.S.A. 18A:12-24.1(f)* (Count 10 only), and/or *N.J.S.A. 18A:12-24.1(g)* (Count 10 only), and must be dismissed.

#### **IV. 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 Counts 1-6 were untimely filed, and to grant the Motion to Dismiss as to the claims in Counts 7-11 because Complainant failed to plead sufficient credible facts to support a finding(s) that Respondent violated the cited provisions of the Act.

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

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Robert W. Bender, Chairperson

Mailing Date: March 21, 2023

***Resolution Adopting Decision  
in Connection with C108-22***

***Whereas***, at its meeting on February 21, 2023, the School Ethics Commission (Commission) considered the Complaint, the Motion to Dismiss in Lieu of Answer (Motion to Dismiss), and the response to the Motion to Dismiss submitted in connection with the above-referenced matter; and

***Whereas***, at its meeting on February 21, 2023, the Commission discussed finding that the claims in Counts 1-6 were untimely filed, and granting the Motion to Dismiss as to the allegations in Counts 7-11 because Complainant failed to plead sufficient credible facts to support a finding(s) that Respondent violated the cited provisions of the School Ethics Act; and

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

***Now Therefore Be It Resolved***, that the Commission hereby adopts the decision and directs its staff to notify all parties to this action of its decision herein.

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Robert W. Bender, Chairperson

I hereby certify that the Resolution was duly adopted by the School Ethics Commission at its public meeting on March 21, 2023.

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