

Before the School Ethics Commission
Docket No.: C110-22
Decision on Motion to Dismiss

Elizabeth Urbanski,
Complainant

v.

Terence Wall,
Holmdel Board of Education, Monmouth County,
Respondent

I. Procedural History

The above-captioned matter arises from a Complaint that was filed with the School Ethics Commission (Commission) on November 14, 2022, by Elizabeth Urbanski (Complainant), alleging that Terence Wall (Respondent), a member of the Holmdel Board of Education (Board), violated the School Ethics Act (Act), *N.J.S.A.* 18A:12-21 *et seq.* By correspondence dated November 17, 2022, Complainant was notified that the Complaint was deficient, and required amendment before the Commission could accept her filing. On the same day, November 17, 2022, Complainant cured all defects and filed an Amended Complaint (Complaint) that was deemed compliant with the requirements detailed in *N.J.A.C.* 6A:28-6.3. More specifically, the Complaint avers that Respondent violated *N.J.S.A.* 18A:12-24.1(a) (in Counts 1-5), *N.J.S.A.* 18A:12-24.1(b) (in Counts 1-2 and Counts 4-5), *N.J.S.A.* 18A:12-24.1(c) (in Counts 1-2 and Counts 4-5), *N.J.S.A.* 18A:12-24.1(e) (in Counts 1-5), *N.J.S.A.* 18A:12-24.1(f) (in Counts 1-2 and Counts 4-5), *N.J.S.A.* 18A:12-24.1(g) (in Counts 1-3 and Count 5), and *N.J.S.A.* 18A:12-24.1(i) (in Counts 1-2 and Counts 4-5) of the Code of Ethics for School Board Members (Code).

On November 18, 2022, the Complaint was served on Respondent via electronic mail, notifying him that ethics charges had been filed against him with the Commission, and advising that he had twenty (20) days to file a responsive pleading.¹ On January 5, 2023, Respondent filed a Motion to Dismiss in Lieu of Answer (Motion to Dismiss), and also alleged that the Complaint is frivolous. On January 23, 2023, Complainant filed a response to the Motion to Dismiss and allegation of frivolous filing.

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

¹ 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.

order to make a determination regarding the Motion to Dismiss and allegation of frivolous filing. Following its discussion on February 21, 2023, the Commission adopted a decision at its meeting on March 21, 2023, finding that the Complaint was timely filed, but granting the Motion to Dismiss in its entirety because Complainant failed to plead sufficient credible facts to support a finding that Respondent violated *N.J.S.A.* 18A:12-24.1(a) (in Counts 1-5), *N.J.S.A.* 18A:12-24.1(b) (in Counts 1-2 and Counts 4-5), *N.J.S.A.* 18A:12-24.1(c) (in Counts 1-2 and Counts 4-5), *N.J.S.A.* 18A:12-24.1(e) (in Counts 1-5), *N.J.S.A.* 18A:12-24.1(f) (in Counts 1-2 and Counts 4-5), *N.J.S.A.* 18A:12-24.1(g) (in Counts 1-3 and Count 5), and/or *N.J.S.A.* 18A:12-24.1(i) (in Counts 1-2 and Counts 4-5). The Commission also adopted a decision finding the Complaint not frivolous, and denying Respondent's request for sanctions.

II. Summary of the Pleadings

A. *The Complaint*

Complainant states, in general terms, that Respondent has engaged “on a campaign to undermine the operations” of the Holmdel Public Schools District (District) and the Board “because of his personal disagreement with the selection of the Board leadership by the majority members of the Board ... all of whom are females.” Further, the “political positions” taken by Respondent, “in conjunction with his animus exhibited towards women, people who are protected due to their national origin, and/or supporters of the [New Jersey Education Association (NJE)], has spilled over in his operations as a Board member.” Moreover, and in the past year, Respondent has engaged in “harassing, intimidating and bullying tactics to cast [Complainant] and other members of the Board in a defamatory and false light, using information he gains as a member of the Board”

More specifically, following the general election in 2021, Complainant was approached by certain members of the Board and asked to consider serving as President. When Complainant spoke to Respondent and asked for his support, Respondent was outwardly “hostile.” Complainant believes that Respondent's “hostility towards [her] and other Board members is grounded in bias based upon gender and national original, as well as his political animus towards the NJEA.” After it was clear that Complainant would serve as Board President, Respondent “repeatedly told her he would not support her and would, in fact, ‘do everything he could do to obstruct’ [her] and not participate in Board ... matters” Following Complainant's appointment to the position of Board President, Respondent engaged in a number of actions evidencing his “unwillingness to work with the ... female members of the Board,” and those he perceived “as being supported by the NJEA.” Complainant cites a number of incidents where Respondent allegedly demonstrated gender bias and national origin bias.

Complainant maintains Respondent emailed the incoming Superintendent prior to the Superintendent formerly starting the position, wherein Respondent allegedly tried to undermine Complainant and to criticize the “female-led leadership team of the Board.” In a (failed) attempt to bring harmony to the Board, Complainant was able to orchestrate the administrative dismissal of an ethics complaint (docketed as C53-21) against Respondent. Following the dismissal of his ethics complaint, Respondent “denigrated the members of the Board (all of whom are female), in a public [manner]” In addition, and multiple times thereafter, Respondent “continued to

ignore the policies and practices of the Board, by ignoring Board leadership and the chain of command, in his actions as a Board member.” On multiple occasions, and despite the process in place, Respondent has emailed the Superintendent without copying “Board leadership” on the communications, and/or has sent communications that violate the Open Public Meetings Act (OPMA).

Complainant also contends that Respondent obtained and then disclosed information concerning a minor motor vehicle accident that Complainant was involved in from November 2021 (on school property); communicated with a journalist at the Asbury Park Press about the incident “in furtherance of his efforts to cast [Complainant] in a false light and undermine her leadership”; and shared the incident with other members of the Board even though it was a non-Board matter. Complainant asserts that Respondent did not have personal knowledge of the facts of the accident, and his comments to the press (seemingly on behalf of the Board) were meant to “harass, intimidate, and bully” Complainant, and disrupt the operations of the District. Additionally, Complainant asserts that Respondent’s wife wrote articles about the motor vehicle incident, which were ultimately “retracted” because they contained “false, misleading, and defamatory comments” made about Complainant. Moreover, despite being aware that the car accident was not a Board matter, Respondent emailed the entire Board on June 11, 2022, and included a screen shot of the Asbury Park Press article, and called for the resignation of Complainant and the female members of the Board.

According to Complainant, she has received, in her capacity as Board President, “many complaints from the members of the Board ... of [Respondent’s] inappropriate hostility he exhibits toward the female members of the Board,” and provided several examples of his discriminatory actions and statements (on or about February 22, 2022; and March 24-26, 2022; April 6, 2022; June 11, 2022).

Complainant additionally argued that Respondent “actively engaged in comments regarding the school’s curriculum that exhibit his bias” and, on “multiple occasions,” Respondent “has failed to respect the roles and responsibilities of school personnel, causing the Superintendent to engage in regular communications with [her] to remind her that [Respondent] needs to confine his actions to policy making and to stop interfering with the roles and responsibilities of school personnel.” For example, on October 14, 2022, Respondent, after reviewing the agenda for a Curriculum and Instruction Committee, engaged in his own research of the books being presented to the Board for approval, and then emailed members of the Committee, the Superintendent, the Assistant Superintendent, Director of Curriculum & Instruction, and District secretaries expressing his personal concerns regarding the textbooks. Additionally, on October 19, 2022, Respondent demanded that the Superintendent have school personnel rewrite curriculum in the areas that Respondent found objectionable as it pertains to the revisions to the health and physical education curriculum.

As evidenced by the above, Complainant asserts that Respondent “has engaged in a pervasive pattern and practice, to undermine the operations of the ... District, in violation of the ... Code”; “been involved in a campaign to disrupt a woman and minority led ... Board by conducting harassing actions involving unethical methods, by engaging in unauthorized communications with the public and the press, by conducting his own investigation to intrude

upon the private matters of Board members, and by undermining the Board [l]eadership in their relationships with ... District administration”; and “engages in harassing, intimidating and bullying tactics to try to silence people for his own political and/or personal agenda.”

In Count 1, Complainant alleges that, on or about December 2, 2021; December 3, 2021; January 5, 2022; January 25, 2022; January 27, 2022; February 22, 2022; February 24, 2022; March 9, 2022; March 23, 2022; March 24-26, 2022; April 6, 2022; May 26, 2022; June 10, 2022; June 11, 2022; October 14, 2022; and October 19, 2022, Respondent, created a hostile and discriminatory environment, by failing to comply with state and federal anti-discrimination laws, and violated: *N.J.S.A. 18A:12-24.1(a)* because he has failed to uphold and enforce all laws, rules and regulation of the State Board of Education; *N.J.S.A. 18A:12-24.1(b)* because he has failed to make decisions in furtherance of the educational welfare of children; *N.J.S.A. 18A:12-24.1(c)* because he has failed to confine his action to policy making, planning, and appraisal; and *N.J.S.A. 18A:12-24.1(e)* because he has failed to set aside his personal beliefs and biases, and instead, has proceeded in a manner that compromises the Board based upon his only private benefit and failed to respect that the authority of the Board rests with the Board.

Moreover, Respondent violated *N.J.S.A. 18A:12-24.1(f)* because he is motivated by his own political gain; *N.J.S.A. 18A:12-24.1(g)* because he has failed to adhere to laws, rules and practices that ensure the confidentiality of matters related to the schools, and instead, proceeded in a manner in his hostility and/or attacks toward Board members that needlessly injures individuals and the schools; and *N.J.S.A. 18A:12-24.1(i)* because he has failed to support and protect school personnel in the proper performance of their duties.

In Count 2, Complainant contends that, on or about June 10, 2022, and June 11, 2022, Respondent used his position to cast Complainant in a false light by violating Board policy in his communications with members of the press and public, and violated *N.J.S.A. 18A:12-24.1(a)*; *N.J.S.A. 18A:12-24.1(b)*; *N.J.S.A. 18A:12-24.1(c)*; *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(i)* for the same reasons as argued in Count 1.

In Count 3, Complainant asserts that, on or about March 9, 2022; March 24-26, 2022; June 10, 2022; and June 11, 2022, Respondent violated the OPMA in his communications with other members of the Board, and did so despite multiple warnings to discontinue such practice, in violation of *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(g)* for the same reasons as argued in Count 1.

In Count 4, Complainant alleges that, on or about February 24, 2022; October 14, 2022; and October 19, 2022, Respondent interfered “with the curriculum decisions of the District due to his own political and illegal bias” in violation of *N.J.S.A. 18A:12-24.1(a)*; *N.J.S.A. 18A:12-24.1(b)*; *N.J.S.A. 18A:12-24.1(c)*; *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(i)* for the same reasons as argued in Count 1.

In Count 5, Complainant contends that, on or about December 2, 2021; December 3, 2021; January 5, 2022; January 25, 2022; January 27, 2022; February 24, 2022; March 9, 2022; March 23, 2022; March 26, 2022; May 26, 2022; June 10, 2022; June 11, 2022; October 14,

2022; and October 19, 2022, Respondent undermined the operations of the Board and created exposure for the District in violation of *N.J.S.A.* 18A:12-24.1(a); *N.J.S.A.* 18A:12-24.1(b); *N.J.S.A.* 18A:12-24.1(c); *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(i) for the same reasons as argued in Count 1.

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

In his Motion to Dismiss and allegation of frivolous filing, Respondent asserts that the allegations related to Respondent's Fall 2021 election campaign; Complainant's January 2022 appointment as Board President; Respondent's alleged January 2022 emails regarding committee assignments and Board leadership; Respondent's alleged March 2022 Facebook post; Respondent's alleged March 2022 correspondence regarding Complainant's November 2021 motor vehicle incident; Respondent's alleged February, March, and April emails regarding student employment; and Respondent's alleged February 2022 email regarding curriculum, occurred "more than 180 days prior to Complainant's [initial] filing ... on November 14, 2022," and are untimely and should be dismissed.

Respondent further asserts that Complainant has failed to attach all of the alleged text messages, emails, Facebook posts, and other communications referenced in the Complaint, thereby "rendering the Complaint devoid of factual support." On the merits of those claims, Respondent denies the allegations as pled.

Respondent contends that Complainant, throughout the complaint, alleges that Respondent engaged in conduct "during the last calendar year," "over the last year," "throughout the last year," "throughout the year," "throughout this year," "throughout the prior year," "through the year," "during the past year," "during the last year," "for the last year," "on numerous occasions," "on multiple occasions," and "at times" etc. Because Complainant failed to provide specific details or attach any evidence of the alleged actions and/or communications referenced in these portions of the Complaint, he cannot ascertain whether they were timely filed. Nonetheless, Respondent denies the substance of the allegations contained in the cited portions of the Complaint.

With the dismissal of the claims that Respondent regards as untimely, the following remain: Complainant alleges that Respondent criticized Complainant in a May 26, 2022, email; communicated with the press and Board members in June 2022 regarding Complainant's motor vehicle incident; responded to another Board member "in a hostile manner" on June 11, 2022; and emailed Board members and school district personnel regarding curriculum in October 2022. As to these allegations, even if the May 26, 2022, email language attributed to Respondent is accurate, "the Complaint is entirely devoid of any legal authority providing that criticism is violative of" the Act; even if the quote attributed to Respondent in the Asbury Park Press article is accurate, "the quote includes the language 'in my opinion' and notes that the speaker 'stress[ed] that he does not speak for the entire [B]oard,'" and the "Complaint is entirely devoid of support for the allegation that Respondent's alleged statement 'infers he is disclosing the opinions of other members of the Board ... '"; even if the allegations related to the articles written by Respondent's wife are accurate, they "pertain to alleged acts committed by Respondent's wife and/or by 'the TapInto publishing organization,' not acts committed by

Respondent”; even if the language in the June 11, 2022, email is accurate, “the Complaint is entirely devoid of any legal authority providing that criticism is violative of the Act ... or any support for the allegation that the email ‘threatened the female members of the Board,’” and equally devoid “of any legal authority providing that heated exchanges between board members are prohibited by the ... Act”; and even if the language attributed to Respondent in the October 14, 2022, and/or October 19, 2022, email communications is accurate, “the Complaint is entirely devoid of any legal authority prohibiting board members from expressing their opinions regarding curriculum.”

In more specific response to the alleged violations of the Act, and regarding the alleged violation(s) of *N.J.S.A.* 18A:12-24.1(a), Respondent argues that Complainant has not provided a copy of a final decision from any court or administrative agency demonstrating that Respondent failed to enforce the laws, rules, and regulations of the State Board, and/or any court orders pertaining to schools, or that Respondent brought about changes through illegal or unethical procedures. Even if such a decision or order existed, liability would fall on the Board, not Respondent. As for the purported violation(s) of *N.J.S.A.* 18A:12-24.1(b), Respondent contends that Complainant has failed to identify any decision made by Respondent that was contrary to the educational welfare of children, or any deliberate action taken by Respondent to obstruct children’s needs.

Regarding the alleged violation(s) of *N.J.S.A.* 18A:12-24.1(c), Respondent maintains that the Complaint “fails to identify any board action taken by Respondent without consulting those affected or any action unrelated to his duties as a Board member.” As for the purported violation(s) of *N.J.S.A.* 18A:12-24.1(e), Respondent asserts “the Complaint fails to identify any personal promise or action taken by Respondent beyond the scope of his duties with the potential to compromise the entire Board.” Regarding the alleged violation(s) of *N.J.S.A.* 18A:12-24.1(f), Respondent argues “the Complaint fails to identify any special interest or partisan political group on behalf of which Respondent took any action, or any manner in which Respondent used the schools for his own benefit.”

As for the purported violation(s) of *N.J.S.A.* 18A:12-24.1(g), Respondent asserts “the Complaint fails to identify any confidential, nonpublic, or inaccurate information disclosed by Respondent.” Regarding the alleged violation(s) of *N.J.S.A.* 18A:12-24.1(i), Respondent contends “the Complaint fails to identify any action taken by Respondent that undermined any school personnel in the performance of their duties.” To the extent a violation(s) of *N.J.S.A.* 18A:12-24.1(j) is alleged, Respondent maintains there is no reference in the “Ethics Charges” to a violation of this subsection; therefore, to the extent such a claim is being made, Complainant fails to state a claim.

Respondent also notes that, for each alleged ethics violation set forth in the Complaint, “Complainant simply parrots the language of the statute in her conclusory allegations,” and such a “tactic is insufficient to sustain a claim.” Moreover, regarding the alleged violation(s) of the Open Public Records Act (OPRA), OPMA, and anti-discrimination laws cited in the Complaint, Respondent asserts that all such claims are outside the jurisdiction of the Commission to adjudicate.

Finally, Respondent asserts the Complaint is frivolous, and requests that sanctions be imposed. Not only does the Complaint lack sufficient factual evidence, it also contains nothing more than conclusory allegations. Respondent maintains that Complainant, as a former Board member, knew or should have known that a complaint must be supported by factual evidence. Instead, Complainant filed this matter simply because she and Respondent did not see “eye to eye” on certain issues. Respondent alleges the filing is abusive of the Commission and the Act “which was designed to address conduct in violation of the public trust, not personal disagreements.” Accordingly, Respondent asserts that the Complaint must be dismissed, and sanctions imposed.

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

In her response to the Motion to Dismiss and allegation of frivolous filing, Complainant reaffirms that Respondent repeatedly engaged in unethical conduct, which was designed to further his own personal agenda, regardless of the effect it had upon the District and/or its personnel. Complainant restates Respondent’s unethical conduct harms the education of the District’s children and is “tortious interference” in the careers of the District staff.

Regarding the suggestion that her claims lack factual support or the source documents are not provided, Complainant submitted additional support and documentation. Complainant also maintains that the quotes in the Complaint are accurate.

As to the untimeliness of certain conduct, Complainant asserts that the information which is outside of the 180 day timeframe is designed to depict Respondent as a “serial bad actor,” and to show that his actions were not mistakes, “heated exchanges,” or differences of opinion. Further, Complainant asserts that Respondent’s ethical violations are “continuing violations” under the continuing violation doctrine, and that the limitations period begins to run only when Respondent ceases his improper conduct; per Complainant, Respondent’s unethical behavior is continuing. As such, Complainant asks the Commission to consider all of the conduct as set forth in the Complaint, and the additional conduct set forth in her response, some of which occurred in 2001.²

Complainant notes that the Superintendent, Scott Cascone; Board Secretary Michael Petrizzo; and Board Counsel, Paul Green, were all harmed by Respondent’s actions. Additionally, Complainant asserts that the Director of Curriculum & Instruction, Dr. Jessica Irwin; the High School Principal, Dr. Matt Kukoda; Satz School Principal, William Loughran; current and past Board members; and the District’s children have all been harmed by Respondent’s actions as a Board member.

² Although, as part of her response to the Motion to Dismiss and allegation of frivolous filing, Complainant references a series of actions/conduct that occurred over a period of years, and as long ago as 2001, the Commission notes that, not only are these allegations untimely, but they also were not pled in the charging document, i.e., the Complaint. Therefore, the Commission offers no determination as to whether any of these actions/conduct may have violated the Act.

Complainant also takes issue with the “disclaimer” that Respondent allegedly gave to the Asbury Park Press, wherein he indicated that he “did not speak for the entire [B]oard.” Per Complainant, this disclaimer allows the reader to assume that he spoke for “some of the Board” and, as such, it is not a proper disclaimer. Complainant further notes that Respondent has failed to retract or modify the statement.

Complainant also affirms that, despite Respondent’s arguments, she has established that Respondent violated *N.J.S.A. 18A:12-24.1(a)* because he engaged in behavior to “coerce change” in a manner that is not “through legal and ethical procedures”; *N.J.S.A. 18A:12-24.1(b)* because Respondent’s actions are not in the best interests of the educational welfare of children; *N.J.S.A. 18A:12-24.1(c)* because Respondent’s conduct was not confined to policy making, planning and appraisal; *N.J.S.A. 18A:12-24.1(e)* because Respondent engaged in private action that compromised the Board; *N.J.S.A. 18A:12-24.1(f)* because Respondent’s conduct, including speaking to the press, evidence the use of his official position for personal gain; *N.J.S.A. 18A:12-24.1(g)* because Respondent failed to keep information confidential, and that the disclosure of the same needlessly injured individuals or schools; and *N.J.S.A. 18A:12-24.1(i)* because Respondent failed to support and protect school personnel.

Finally, Complainant maintains the motivation behind her filing of the Complaint is that she affirmatively believes that Respondent has engaged in unethical conduct, including when he spoke to the press about her motor vehicle accident. Complainant denies that she filed an ethics complaint because she lost in the election. Complainant also notes that Respondent’s jurisdictional arguments are not relevant, that her Complaint is not frivolous; that Respondent’s request for sanctions is frivolous; and the Motion to Dismiss and request for sanctions must be denied.

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:12-24.1(a)* (in Counts 1-5), *N.J.S.A. 18A:12-24.1(b)* (in Counts 1-2 and Counts 4-5), *N.J.S.A. 18A:12-24.1(c)* (in Counts 1-2 and Counts 4-5), *N.J.S.A. 18A:12-24.1(e)* (in Counts 1-5), *N.J.S.A. 18A:12-24.1(f)* (in Counts 1-2 and Counts 4-5), *N.J.S.A. 18A:12-24.1(g)* (in Counts 1-3 and Count 5), and/or *N.J.S.A. 18A:12-24.1(i)* (in Counts 1-2 and Counts 4-5).

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 OPRA, the OPMA, state or federal anti-discrimination laws, 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. Consequently, those contentions are *dismissed*.

C. *Alleged Untimeliness*

In his Motion to Dismiss and allegation of frivolous filing, Respondent submits that the allegations related to Respondent's Fall 2021 election campaign; Complainant's January 2022 appointment as Board President; Respondent's alleged January 2022 emails regarding committee assignments and Board leadership; Respondent's alleged March 2022 Facebook post; Respondent's alleged March 2022 correspondence regarding Complainant's November 2021 motor vehicle incident; Respondent's alleged February, March, and April emails regarding student employment; and Respondent's alleged February 2022 email regarding curriculum, occurred "more than [one hundred eighty (180)] days prior to Complainant's [initial] filing ... on November 14, 2022," and, therefore, are untimely and should be dismissed.

In her response, and as to the untimeliness of certain actions/conduct, Complainant asserts that the actions/conduct which may have occurred outside of the period of limitations are designed to depict Respondent as a "serial bad actor," and to show that his actions were not mistakes, "heated exchanges," or differences of opinion. Moreover, Complainant maintains that Respondent's ethical violations are "continuing violations" under the continuing violation doctrine, and that the limitations period only begins when his improper conduct ends. As a result, Complainant asks the Commission to regard all of the allegations as timely filed.

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).

Although Complainant did not file a Complaint that was deemed compliant with the Commission's regulations (*N.J.A.C. 6A:28-6.3*) until November 17, 2022, she filed her first deficient Complaint on November 14, 2022; therefore, and because Complainant's amendments

relate back to the date her Complaint was first received by the Commission (November 14, 2022), one hundred eighty (180) days prior thereto is **May 18, 2022**. See *N.J.A.C.* 6A:28-6.7(b).

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, due to the alleged continuing nature of Respondent’s actions/conduct, and Complainant’s position that Respondent’s unethical behavior remains “ongoing,” the regulatory time period for filing a complaint should be relaxed in this matter, and that strict adherence thereto is not, based on the facts and circumstances as pled, required. Consequently, the Commission finds that, regardless of whether meritorious, *all* of the allegations in the Complaint were timely filed.

D. *Alleged Violations of the Act*

Complainant submits that, based on the conduct more fully detailed above, Respondent violated *N.J.S.A.* 18A:12-24.1(a) (in Counts 1-5), *N.J.S.A.* 18A:12-24.1(b) (in Counts 1-2 and Counts 4-5), *N.J.S.A.* 18A:12-24.1(c) (in Counts 1-2 and Counts 4-5), *N.J.S.A.* 18A:12-24.1(e) (in Counts 1-5), *N.J.S.A.* 18A:12-24.1(f) (in Counts 1-2 and Counts 4-5), *N.J.S.A.* 18A:12-24.1(g) (in Counts 1-3 and Count 5), and *N.J.S.A.* 18A:12-24.1(i) (in Counts 1-2 and Counts 4-5), and 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.

b. I will make decisions in terms of the educational welfare of children and will seek to develop and maintain public schools that meet the individual needs of all children regardless of their ability, race, creed, sex, or social standing.

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

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.

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

Pursuant to *N.J.A.C.* 6A:28-6.4(a), violations of *N.J.S.A.* 18A:12-24.1(a), *N.J.S.A.* 18A:12-24.1(b), *N.J.S.A.* 18A:12-24.1(c), *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(i) 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.

2. Factual evidence of a violation of *N.J.S.A.* 18A:12-24.1(b) shall include evidence that Respondent willfully made a decision contrary to the educational welfare of children, or evidence that Respondent took deliberate action to obstruct the programs and policies designed to meet the individual needs of all children, regardless of their ability, race, color, creed or social standing.

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

5. Factual evidence of a violation of *N.J.S.A.* 18A:12-24.1(e) shall include evidence that Respondent made personal promises or took action beyond the

scope of his duties such that, by its nature, had the potential to compromise the board.

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 himself, a member of his 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.

9. Factual evidence of a violation of *N.J.S.A.* 18A:12-24.1(i) shall include evidence that Respondent took deliberate action which resulted in undermining, opposing, compromising or harming school personnel in the proper performance of their duties.

After a comprehensive review, the Commission finds that even if the facts as averred in the Complaint are proven true by sufficient credible evidence, they would not support a finding that Respondent violated *N.J.S.A.* 18A:12-24.1(a), *N.J.S.A.* 18A:12-24.1(b), *N.J.S.A.* 18A:12-24.1(c), *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(i). With regard to the purported violations 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 he brought about changes through illegal or unethical procedures, when he engaged in any of the actions/conduct set forth in Counts 1-5. If Complainant could provide, within the period of limitations, “a final decision from any court of law or administrative agency of this State” demonstrating that an individual school official, including Respondent, acted contrary to the laws, rules, and regulations promulgated by the State Board of Education, and/or a court order pertaining to schools, or that he brought about changes through illegal or unethical procedures, he could *then* be found in violation of *N.J.S.A.* 18A:12-24.1(a) for the conduct set forth in Counts 1-5. However, based on the record in its current form, a violation(s) of *N.J.S.A.* 18A:12-24.1(a) cannot be supported.

The Commission further finds that the stated violations of *N.J.S.A.* 18A:12-24.1(b), *N.J.S.A.* 18A:12-24.1(c), *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(i) are equally unsupportable because Complainant failed to identify the specific decision made by Respondent that was contrary to the educational welfare of children, or the deliberate action undertaken by Respondent to obstruct the needs of all children (*N.J.S.A.* 18A:12-24.1(b)); failed to identify the specific action taken by Respondent to effectuate a policy or plan without first consulting those affected by such a policy or plan, or the action that was unrelated to his duties as a Board member (*N.J.S.A.* 18A:12-24.1(c)); failed to identify the personal promise or action taken by Respondent that was beyond the scope of his duties as a Board member (*N.J.S.A.* 18A:12-24.1(e)); failed to identify the specific action taken by Respondent on behalf of, or at the request, of a special interest group or other organized persons, and failed to provide specific evidence as to how Respondent used the schools to acquire a specific benefit for himself (or anyone else) (*N.J.S.A.* 18A:12-24.1(f)); failed to provide 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 (*N.J.S.A.* 18A:12-24.1(g)); and failed to provide evidence detailing the deliberate action taken by Respondent that resulted in undermining, opposing, compromising or harming school personnel (*N.J.S.A.* 18A:12-24.1(i)). Instead, Complainant makes broad sweeping generalizations and characterizations about Respondent's conduct (and what she believes is the impetus for Respondent's conduct) and then contends, in a vague and non-specific way, that Respondent violated multiple provisions of the Code. Although the Commission does not condone "discriminatory," "harassing," or "hostile" conduct, a Board member who does not always vote or act in lockstep with his Board colleagues, or who may challenge the administration and the decision-making process, cannot, without sufficient, competent, and specific factual evidence, be found in violation of the Act, and/or in violation of *N.J.S.A.* 18A:12-24.1(b), *N.J.S.A.* 18A:12-24.1(c), *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(i) specifically.

Accordingly, and for the reasons further detailed above, the Commission finds that the purported violations of *N.J.S.A.* 18A:12-24.1(a) (in Counts 1-5), *N.J.S.A.* 18A:12-24.1(b) (in Counts 1-2 and Counts 4-5), *N.J.S.A.* 18A:12-24.1(c) (in Counts 1-2 and Counts 4-5), *N.J.S.A.* 18A:12-24.1(e) (in Counts 1-5), *N.J.S.A.* 18A:12-24.1(f) (in Counts 1-2 and Counts 4-5), *N.J.S.A.* 18A:12-24.1(g) (in Counts 1-3 and Count 5), and *N.J.S.A.* 18A:12-24.1(i) (in Counts 1-2 and Counts 4-5) should be dismissed.

IV. Request for Sanctions

At its meeting on February 21, 2023, the Commission considered Respondent's request that the Commission find the Complaint frivolous, and impose sanctions pursuant to *N.J.S.A.* 18A:12-29(e). Despite Respondent's argument, the Commission cannot find evidence that might show that Complainant filed the Complaint in bad faith or solely for the purpose of harassment, delay, or malicious injury. The Commission also does not have information to suggest that Complainant knew or should have known that the Complaint was without any reasonable basis in law or equity, or that it could not be supported by a good faith argument for an extension, modification or reversal of existing law. *N.J.A.C.* 6A:28-1.2. Therefore, at its meeting on February 21, 2023, the Commission discussed finding the Complaint not frivolous, and denying the request for sanctions.

V. Decision

Based on the foregoing, and in reviewing the facts in the light most favorable to the non-moving party (Complainant), the Commission voted to find that the Complaint was timely filed, but to **grant** the Motion to Dismiss in its entirety because Complainant failed to plead sufficient credible facts to support a finding that Respondent violated *N.J.S.A.* 18A:12-24.1(a) (in Counts 1-5), *N.J.S.A.* 18A:12-24.1(b) (in Counts 1-2 and Counts 4-5), *N.J.S.A.* 18A:12-24.1(c) (in Counts 1-2 and Counts 4-5), *N.J.S.A.* 18A:12-24.1(e) (in Counts 1-5), *N.J.S.A.* 18A:12-24.1(f) (in Counts 1-2 and Counts 4-5), *N.J.S.A.* 18A:12-24.1(g) (in Counts 1-3 and Count 5), and/or *N.J.S.A.* 18A:12-24.1(i) (in Counts 1-2 and Counts 4-5). The Commission also voted to find that the Complaint is not frivolous, and to deny Respondent's request for sanctions.

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

Robert W. Bender, Chairperson

Mailing Date: March 21, 2023

**Resolution Adopting Decision
in Connection with C110-22**

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 allegation of frivolous filing, and the response to the Motion to Dismiss and allegation of frivolous filing submitted in connection with the above-referenced matter; and

Whereas, at its meeting on February 21, 2023, the Commission discussed finding that the Complaint was timely filed, but granting the Motion to Dismiss in its entirety for failure to plead sufficient credible facts to support the allegations that Respondent violated *N.J.S.A.* 18A:12-24.1(a) (in Counts 1-5), *N.J.S.A.* 18A:12-24.1(b) (in Counts 1-2 and Counts 4-5), *N.J.S.A.* 18A:12-24.1(c) (in Counts 1-2 and Counts 4-5), *N.J.S.A.* 18A:12-24.1(e) (in Counts 1-5), *N.J.S.A.* 18A:12-24.1(f) (in Counts 1-2 and Counts 4-5), *N.J.S.A.* 18A:12-24.1(g) (in Counts 1-3 and Count 5), and/or *N.J.S.A.* 18A:12-24.1(i) (in Counts 1-2 and Counts 4-5); and

Whereas, at its meeting on February 21, 2023, the Commission discussed finding the Complaint not frivolous, and denying the request for sanctions; 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.

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.

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