

Before the School Ethics Commission
Docket No.: C120-22
Decision on Motion to Dismiss

Daniel P. Kilgallon,
Complainant

v.

Michele Barbieri,
Upper Township Board of Education, Cape May County,
Respondent

I. Procedural History

The above-captioned matter arises from a Complaint that was filed with the School Ethics Commission (Commission) on December 7, 2022, by Daniel P. Kilgallon (Complainant), alleging that Michele Barbieri (Respondent), a member of the Upper Township Board of Education (Board), violated the School Ethics Act (Act), *N.J.S.A. 18A:12-21 et seq.* By correspondence dated December 7, 2022, Complainant was notified that the Complaint was deficient, and required amendment before the Commission could accept his filing. On December 16, 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*. The Complaint avers that Respondent violated *N.J.S.A. 18A:12-24.1(c)* (in Count 1), *N.J.S.A. 18A:12-24.1(e)* (in Counts 2-3), *N.J.S.A. 18A:12-24.1(f)* (in Count 1), *N.J.S.A. 18A:12-24.1(g)* (in Counts 1-3), and *N.J.S.A. 18A:12-24.1(i)* (in Count 3) of the Code of Ethics for School Board Members (Code).

On December 16, 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.¹ On January 13, 2023, Respondent filed a Motion to Dismiss in Lieu of Answer (Motion to Dismiss), and also alleged that the Complaint is frivolous. On February 1, 2023, Complainant filed a response to the Motion to Dismiss and allegation of frivolous filing.

The parties were notified by correspondence dated March 13, 2023, that the above-captioned matter would be discussed by the Commission at its meeting on March 21, 2023, in order to make a determination regarding the Motion to Dismiss and allegation of frivolous filing. Following its discussion on March 21, 2023, the Commission adopted a decision at its meeting on April 25, 2023, granting the Motion to Dismiss in its entirety because Complainant failed to

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.

plead sufficient credible facts to support a finding that Respondent violated *N.J.S.A.* 18A:12-24.1(c) (in Count 1), *N.J.S.A.* 18A:12-24.1(e) (in Counts 2-3), *N.J.S.A.* 18A:12-24.1(f) (in Count 1), *N.J.S.A.* 18A:12-24.1(g) (in Counts 1-3), and/or *N.J.S.A.* 18A:12-24.1(i) (in Count 3). 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*

In Count 1, Complainant states that, on November 5, 2022, Respondent (the Board President) posted a video on both her personal Facebook page, and "her ticket's campaign Facebook page," which contained Complainant's public comments from the Board meeting on September 19, 2022, along with his name. In the "heading" of the post, Respondent wrote: "Kids are like a mirror; what they say and hear they do. Be a good reflection for them[.]' This right here is not the behavior we'd accept from our children. Why then would we accept that from one who wishes to serve." At the time of the post, Complainant was a candidate for the upcoming Board election, as was Respondent (as an incumbent). In addition, when a member of the public commented on the video ("The ignorance is astounding"), Respondent replied, "exactly and he went from anti vax/anti mask to this." Complainant does not dispute the content of the video, or what he said, and maintains he has the "right to address the [Board] on whatever [his] concerns are."

Based on her social media activity, Complainant asserts that Respondent violated *N.J.S.A.* 18A:12-24.1(c) because Respondent "routinely posts school information and notifications ... from her personal profile to various community pages on 'behalf of the [B]oard'" and, as a result, "[i]t is impossible for the public to discern what is an official [B]oard/[D]istrict statement or what is her own opinion ..." and violated *N.J.S.A.* 18A:12-24.1(f) because her statement that Complainant is "anti vax/anti mask" is "inaccurate and discriminatory." Moreover, "sharing and disparaging public comments and making public judgements about [Complainant's] beliefs or intentions may" discourage other members of the community from addressing the Board. By making these comments, Respondent used "her access as [Board] [P]resident and her status to disparage and criticize members of the community," and used her "privileges" as Board President "for the favor of herself" and those who were running mates (Chisholm and Lentz). Complainant additionally asserts that Respondent violated *N.J.S.A.* 18A:12-24.1(g) because she "disseminated inaccurate information by saying [Complainant] was 'anti vax/anti mask' and was not correctly interpreting [him] as a member of the community."

In Count 2, Complainant states that, on November 2, 2022, Respondent "posted a message on her personal Facebook page stating 'those making deals to get elected.'" Based on this post, Complainant contends that Respondent violated *N.J.S.A.* 18A:12-24.1(e) because Respondent "took private action by sharing inaccurate information to the community at large in order to promote herself on her campaign Facebook page," and this comment "insinuated that candidates ... had made or are making a deal in order to get elected." Per Complainant, Respondent's message "has no basis in fact," and she used her position on the Board to "disparage the character of other candidates," including Complainant. Complainant once again

notes that because Respondent “routinely posts school information and notifications from her personal profile ... on ‘behalf of the [B]oard,’” it is “impossible for the public to discern what is an official [B]oard/[D]istrict statement or what is her own opinion.” Complainant further contends that Respondent violated *N.J.S.A. 18A:12-24.1(g)* because she “was providing community members with a statement as if it were factual when in fact it was false,” and her statement “insinuates [Complainant’s] campaign” made “deals to get elected,” which is not true. By making such statements, Respondent used her position “to disparage the character of other candidates,” including Complainant.

In Count 3, Complainant states that, on November 3, 2022, Respondent “posted on her personal Facebook page a [screen shot of] a comment from a community member and [an Upper Township School District (District)] teacher” that was not directed at her and/or posted on her own social media page. Although Respondent “attempted to block out” the name of the person (and community member/District teacher) who made the comment, “it was clearly visible” and, as a result, numerous community members and teachers made disparaging comments and remarks about this individual on Respondent’s personal Facebook page.

Based on her social media activity, Complainant argues that Respondent violated *N.J.S.A. 18A:12-24.1(e)* because Respondent “took private action to share comments/thoughts that a teacher had posted on a community page in a disparaging way,” and her action “caused a string of negative comments to be posted regarding that teacher which led to discussions regarding the teacher’s ability to do her job appropriately”; violated *N.J.S.A. 18A:12-24.1(g)* because Respondent “chose to share this comment out of context” and did not provide “accurate information to the community at large”; and violated *N.J.S.A. 18A:12-24.1(i)* because Respondent was not “supporting and protecting school personnel by taking it upon herself to share a post (that was not sent directly to her ...) in a negative disparaging way,” and this has “caused an abundance of negative discussions regarding this staff member.”

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

In her Motion to Dismiss, which included an allegation of frivolous filing, and regarding the post in Count 1, Respondent argues that Complainant failed to offer any evidence as to how Respondent’s post shows that she took Board action to effectuate policies and plans without consulting those affected by such policies and plans, or took action that was unrelated to her duty to: develop the general rules and principles that guide the management of the District; formulate the programs and methods to effectuate the goals of the District; or ascertain the value or liability of a policy in violation of *N.J.S.A. 18A:12-24.1(c)*; Complainant presented no evidence that, in making the post, 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 party or cause; or evidence that she used the schools in order to acquire some benefit for herself, a member of her immediate family, or a friend in violation of *N.J.S.A. 18A:12-24.1(f)*; and offered no evidence that substantiates the alleged inaccuracy of the information provided by Respondent in the post, or any evidence that establishes that the alleged inaccuracy was other than reasonable mistake or personal opinion or was not attributable to developing circumstances in violation of *N.J.S.A. 18A:12-24.1(g)*. Instead, Respondent maintains that, as a taxpaying citizen, she is entitled to have opinions on matters affecting the District in her individual

capacity, and her post is representative of that right. In making this post, Respondent “was exercising her First Amendment right to engage in political activity and campaign for a seat on the Board in her role as a private citizen.” As such, “the Commission must find that [Respondent’s] social media activity and her political activity related to the campaign, which was carried out as a private citizen, rather than as a sitting Board member, did not violate the ... Act.” In addition, and of note, there was nothing in Respondent’s post suggesting that she was making it in her official capacity, and instead was being offered “in the context [of her] quest to be reelected to the Board, and was not related to the performance of her duties as a current Board member or any ‘business’ of the Board.” For these reasons, Complainant has failed to produce sufficient evidence to establish a violation of *N.J.S.A. 18A:12-24.1(c)*, *N.J.S.A. 18A:12-24.1(f)*, and/or *N.J.S.A. 18A:12-24.1(g)*.

As for the post at-issue in Count 2, Respondent argues that Complainant offered “absolutely no evidence whatsoever” as to how this comment, by its nature, had the potential to compromise the Board (*N.J.S.A. 18A:12-24.1(e)*), and equally failed to demonstrate that Respondent’s Facebook post contained confidential or inaccurate information (*N.J.S.A. 18A:12-24.1(g)*). In the post, Respondent made “absolutely no reference to Complainant and/or his campaign” and, in fact, “does not identify any individuals and/or campaigns by name in her post.” Moreover, Complainant provided no evidence or allegations that Respondent’s personal Facebook page is in any way associated with her position on the Board. Consequently, Complainant has failed to produce sufficient evidence to establish a violation of *N.J.S.A. 18A:12-24.1(e)* and/or *N.J.S.A. 18A:12-24.1(g)*

With regard to Count 3, although Complainant takes issue with Respondent’s “reposting” of the teacher’s comments, he offers “no allegations as to how it may have compromised the Board as a public entity” (*N.J.S.A. 18A:12-24.1(e)*). In addition, although it is claimed that Respondent did not provide accurate information, Complainant does not suggest that the comment was not written by the teacher, or that it was falsely attributed to her; as a result, “it cannot be said that [Respondent] provided inaccurate information” in violation of *N.J.S.A. 18A:12-24.1(g)*. Moreover, Complainant has “failed to establish how a social media post made by a teacher is part of that teacher’s ‘proper performance of ... duties.’” Instead, “it is highly unlikely that a teacher’s social media post on a personal Facebook account is connected in any way to the proper performance of their duties, which are to educate students in the classroom.” Because Complainant “cannot establish that the teacher at issue was acting in the proper performance of their duties with respect to a social media post made on a personal Facebook account,” he cannot prove a violation of *N.J.S.A. 18A:12-24.1(i)*. As a result, Complainant has failed to produce sufficient evidence to establish a violation of *N.J.S.A. 18A:12-24.1(e)*, *N.J.S.A. 18A:12-24.1(g)*, and/or *N.J.S.A. 18A:12-24.1(i)*.

Finally, Respondent asserts that the Complaint is frivolous because the Complaint “is nothing but an attempt by [Complainant] to use the [Act] as a vehicle for expressing his displeasure with the outcome of the November 2022 election.” Moreover, finding a violation of the Act based on the facts as pled would unnecessarily infringe upon the First Amendment rights of sitting Board members, and their campaign efforts to be reelected to the Board. Although Respondent concedes that public officials “must always be mindful of how others may view or perceive the capacity in which they are speaking,” the speech and expression at issue in the

Complaint is wholly unrelated to the Board. Further, because the allegations in Counts 2-3 are nearly identical to those asserted in a related matter, docketed as C122-22, which was also filed by an individual who was unsuccessful in their bid for election, the Commission “must find the instant Complaint to be frivolous and brought for the sole purpose of harassing Respondent.”

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

In his response to the Motion to Dismiss and allegation of frivolous filing, Complainant maintains that “the statement of facts and evidence ... provided prove” that Respondent violated the Code as alleged. Complainant also disputes the suggestion that the Complaint is frivolous, and instead suggests that such a claim is being made “to intimidate members of the community from addressing” the Board and ensuring compliance with applicable policies and regulations.

In more specific response, and regarding Count 1, Complainant maintains that Respondent routinely posts on Facebook pages and it is impossible to discern the capacity in which she is speaking; Complainant is free to address the Board “on whatever” his concerns may be, and should be able to do so without reprisal; Respondent’s action “was certainly” “to the ‘benefit’ for herself or friends”; and by labeling him as “anti-vax/anti-mask,” Respondent was “inaccurate and discriminatory toward [Complainant’s] personal beliefs.” Further, by making public declarations about Complainant’s “beliefs or intentions,” Respondent may be discouraging others from addressing the Board. Complainant maintains that Respondent used her access as a Board member, and as Board President, “to disparage and criticize members of the community from exercising their right to address” the Board, and by posting the video and adding her “misguided commentary,” Respondent used “her privileges as [Board P]resident for the favor of herself” and her running mates (Chisholm and Lentz). Complainant additionally reiterates that he is not “anti-mask-anti-vax,” and Respondent was willfully inaccurately interpreting [his] aspirations ... as a member of the community.”

As for Count 2, despite Respondent’s “defense” that her post does not reference any person running for the Board (or their campaign), “[i]t was clear to those following [her] Facebook posts who [she] was referring to in that post.” In addition, Complainant argues that Respondent and her running mates did directly refer to Complainant and his running mate during the campaign, but at other times. As such, spreading false information in order to promote herself and her running mates is unethical, and the fact that she showed an image of her badge from the New Jersey School Boards Association convention evidences that the post was made in her capacity as a Board member.

Regarding Count 3, the reposting of the teacher’s comment created a hostile work environment for the teacher at issue, and Respondent, as a Board member, “swore to protect” the teaching staff members employed in the District.

As for the claim that the Complaint is frivolous, Complainant notes that he is unaware “of any provision that says community members cannot assist one another” in filing ethics charges, and his filing “has nothing to do with who won an election and ... everything to do with the behaviors of [Respondent] and how she has conducted herself.” Complainant maintains that Respondent has failed to uphold her oath as a Board member.

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

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 comments/statements may have constituted defamation, slander, and/or libel (or been "discriminatory"), the Commission advises that such determinations fall well beyond the scope, authority, and jurisdiction of the Commission. Even though Complainant may be able to pursue a cause of action in the appropriate tribunal, the Commission is not the appropriate entity to adjudicate those assertions. Therefore, those claims are *dismissed*.

C. *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(c)* (in Count 1), *N.J.S.A. 18A:12-24.1(e)* (in Counts 2-3), *N.J.S.A. 18A:12-24.1(f)* (in Count 1), *N.J.S.A. 18A:12-24.1(g)* (in Counts 1-3), and *N.J.S.A. 18A:12-24.1(i)* (in Count 3), and these provisions of the Code provide:

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), a violation(s) of *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) needs to be supported by certain factual evidence, more specifically:

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 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.

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.

Following its review, the Commission finds that even if the facts as set forth in **Count 1** of the Complaint are proven true by sufficient credible evidence, they would not support a finding(s) that Respondent violated *N.J.S.A.* 18A:12-24.1(c), *N.J.S.A.* 18A:12-24.1(f), and/or *N.J.S.A.* 18A:12-24.1(g). First, because the at-issue social media activity occurred on Respondent's personal Facebook account, and there is no clear relationship between her personal account and her role on the Board, the Commission finds that a reasonable member of the public could not possibly perceive Respondent's post as one being made in her official capacity as a member of the Board, or pursuant to her official duties. Nonetheless, even if the social media activity in question was made in Respondent's official capacity as a member of the Board, Complainant failed to explain how her post, which referenced public statements at a public Board meeting, constituted board action to effectuate a policy or plan without consulting those affected by such a policy or plan, or took action unrelated to her duties as a Board member (*N.J.S.A.* 18A:12-24.1(c)); 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 (*N.J.S.A.* 18A:12-24.1(f)); and/or action to make public, reveal, or disclose information that was not public, or provided inaccurate information which was other than reasonable mistake or personal opinion, or not attributable to developing circumstances (*N.J.S.A.* 18A:12-24.1(g)). Accordingly, the Commission finds that the purported violations of 18A:12-24.1(c), *N.J.S.A.* 18A:12-24.1(f), and/or *N.J.S.A.* 18A:12-24.1(g) in Count 1 should be dismissed.

The Commission further finds that even if the facts as averred in **Count 2** of the Complaint are proven true by sufficient credible evidence, they would not support a determination(s) that Respondent violated *N.J.S.A.* 18A:12-24.1(e) and/or *N.J.S.A.* 18A:12-24.1(g). Similar to Count 1, because the at-issue social media post was on Respondent's personal Facebook account, and there is no direct nexus between this account and Respondent's service on the Board, the Commission again finds that a reasonable member of the public could not possibly perceive Respondent's post as one being made in her official capacity, or pursuant to her official duties as a member of the Board. Furthermore, even if the social media post was made in her official capacity, Complainant did not sufficiently indicate how the statement, "those making deals to get elected" which, significantly, is not attributed to any particular individual(s) or person(s), constituted a personal promise or action beyond the scope of Respondent's duties as a Board member that had the potential to compromise the Board (*N.J.S.A.* 18A:12-24.1(e)), and/or the disclosure of information that was not public or was confidential, or the disclosure of inaccurate information that was "other than reasonable mistake or *personal opinion*." Therefore, the Commission finds that the alleged violations of *N.J.S.A.* 18A:12-24.1(e) and *N.J.S.A.* 18A:12-24.1(g) in Count 2 should be dismissed.

Finally, the Commission finds that even if the facts as pled in **Count 3** of the Complaint are proven true by sufficient credible evidence, they would also not support a finding(s) that Respondent violated *N.J.S.A.* 18A:12-24.1(e), *N.J.S.A.* 18A:12-24.1(g), and/or *N.J.S.A.* 18A:12-24.1(i). As in Counts 1-2, and because the at-issue social media activity took place on Respondent's personal Facebook account, and there is no direct correlation between this account and Respondent's service on the Board, the Commission finds that a reasonable member of the public could not possibly perceive Respondent's post as one being made in her official capacity, or pursuant to her official duties as a member of the Board. Even if made in Respondent's official capacity, Complainant has not provided sufficient factual evidence as to how Respondent's repost of another person's public comment, even if that person was a teacher employed in the District, could have constituted a personal promise or action beyond the scope of Respondent's duties as a Board member that had the potential to compromise the Board (*N.J.S.A.* 18A:12-24.1(e)); constituted the disclosure of information that was not public or was confidential, or the disclosure of inaccurate information that was other than reasonable mistake or personal opinion (*N.J.S.A.* 18A:12-24.1(g)); and/or deliberate action which resulted in undermining, opposing, compromising or harming school personnel in the proper performance of their duties (*N.J.S.A.* 18A:12-24.1(i)). In short, there is absolutely no evidence that the reposting of another's public comment, even if not initially visible to Respondent on her own social media page, was inaccurate, or that it was not made by the person to whom it was attributed. Consequently, the Commission finds that the stated violations of *N.J.S.A.* 18A:12-24.1(e), *N.J.S.A.* 18A:12-24.1(g), and *N.J.S.A.* 18A:12-24.1(i) in Count 3 should be dismissed.

IV. Request for Sanctions

At its meeting on March 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 April 25, 2023, the Commission voted to find that the Complaint is not frivolous, and to deny the request for sanctions.

V. Decision

Based on the foregoing, and in reviewing the facts in the light most favorable to the non-moving party (Complainant), the Commission voted to **grant** the Motion to Dismiss in its entirety because Complainant failed to plead sufficient credible facts to support a finding that Respondent violated *N.J.S.A.* 18A:12-24.1(c) (in Count 1), *N.J.S.A.* 18A:12-24.1(e) (in Counts 2-3), *N.J.S.A.* 18A:12-24.1(f) (in Count 1), *N.J.S.A.* 18A:12-24.1(g) (in Counts 1-3), and/or *N.J.S.A.* 18A:12-24.1(i) (in Count 3). 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: April 25, 2023

***Resolution Adopting Decision
in Connection with C120-22***

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

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

Whereas, at its meeting on April 25, 2023, the Commission reviewed and voted to approve the within decision as accurately memorializing its actions/findings from its meeting on March 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 April 25, 2023.

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