

Before the School Ethics Commission
Docket No.: C88-23
Decision on Probable Cause

Michele Van Allen,
Complainant

v.

Anthony Alfano,
Hardyston Township Board of Education, Sussex County,
Respondent

I. Procedural History

The above-captioned matter arises from a Complaint that was filed with the School Ethics Commission (Commission) on December 6, 2023, by Michele Van Allen (Complainant), alleging that Anthony Alfano (Respondent), a member of the Hardyston Township 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(b) (Counts 1, 3, 4, and 9), *N.J.S.A.* 18A:12-24(c) (Counts 1, 5, and 9), *N.J.S.A.* 18A:12-24(e) (Count 3), as well as *N.J.S.A.* 18A:12-24.1(b) (Counts 4 through 7, 10 and 11), *N.J.S.A.* 18A:12-24.1(c) (Counts 4, 7 and 11), *N.J.S.A.* 18A:12-24.1(e) (Counts 1 through 4, 6, and 8 through 11), *N.J.S.A.* 18A:12-24.1(f) (Counts 1 through 4, 6, 7, 9 and 11), and *N.J.S.A.* 18A:12-24.1(i) (Count 8) of the Code of Ethics for School Board Members (Code).

On December 26, 2023, Respondent filed a Written Statement, and also alleged that the Complaint is frivolous. On January 16, 2024, Complainant filed a response to the allegation of frivolous filing.

The parties were notified by correspondence dated May 13, 2024, that the above-captioned matter would be discussed by the Commission at its meeting on May 21, 2024, in order to make a determination regarding probable cause and the allegation of frivolous filing. Following its discussion on May 21, 2024, the Commission adopted a decision at its special meeting on June 17, 2024, finding that there are insufficient facts and circumstances pled in the Complaint and in the Written Statement to lead a reasonable person to believe that the Act was violated as alleged in the Complaint. 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*

By way of background, Complainant asserts Respondent was a Board candidate in 2022, and ran under the campaign, “Kids First,” with two other candidates. Respondent is also a member of the “Joint Land Use Board” for the Township, a politically appointed position. Complainant further asserts in August 2023, Respondent donated to the Sussex County Republican Committee (Sussex County GOP), and several days later, the Sussex County GOP donated to the Board campaign for a candidate who also served on the Joint Land Use Board and whose candidacy Respondent supported. According to Complainant, Respondent “prominently” displays that he is a Board member on all of his social media pages.

With the above in mind, and in Count 1, Complainant contends that Respondent’s social media page identifies him as a Board member, and on August 2, 2023, Respondent shared a post from the Sussex County GOP to support three candidates in the upcoming election, in violation of *N.J.S.A. 18A:12-24(b)* because he used his position to gain unwarranted advantages for others; *N.J.S.A. 18A:12-24(c)* because he has both a direct and indirect financial involvement for the organization which he has an interest; *N.J.S.A. 18A:12-24.1(e)* because he took actions beyond the scope of his duties which had the potential to compromise the Board by publicly backing a political candidate endorsed by both the local and county political party in a non-partisan election; and *N.J.S.A. 18A:12-24.1(f)* because he took action on behalf of a friend, and a special interest group (the Sussex County GOP) for the benefit of their preferred candidates in a non-partisan election.

In Count 2, Complainant maintains that on August 29, 2023, Respondent shared a link on his social media account to a political fundraising event and encouraged people to join. Complainant further maintains Respondent “announce[d] he [would] be receiving an award, as well as the other Kid’s First candidates at the event for advocating for parental rights.” Complainant contends Respondent violated *N.J.S.A. 18A:12-24.1(e)* because he took action on behalf of a political party which had the potential to compromise the Board and *N.J.S.A. 18A:12-24.1(f)* because he took action on behalf of a political party to gather attendance for an award ceremony where his Board campaign team was being honored for advocating for parental rights.

In Count 3, Complainant states that on September 7, 2023, at a political event that was recorded and posted on the internet, the Kid’s First team received an award, recognition and a plaque from the Sussex County GOP. Complainant further states that during that event, the mayor spoke about having asked Respondent “to head up a team of 3 last year to ‘flip the board’ to Republican and noted that they hired a political campaign manager.” Complainant asserts Respondent violated *N.J.S.A. 18A:12-24(b)* because he used his Board position to obtain an award, gift and recognition from a political party; and *N.J.S.A. 18A:12-24(e)*, *N.J.S.A. 18A:12-24.1(e)* and *N.J.S.A. 18A:12-24.1(f)* because he received an award, gift and recognition from a political party and then five days later continued to push the agenda of the political party and speakers at the event in a process to abolish a policy on the Board on which he serves.

In Count 4, Complainant contends that at a Board meeting on September 12, 2023, Respondent, along with two other Board members/supporters “read prepared statements regarding the need to abolish [Policy 5756,] mirroring the talking points from the event in which they received an award just a few days earlier.” According to Complainant, during the public meeting, local politicians “spoke about the need to remove the policy” and during “new business” a motion was made to review the policy. Complainant further contends Respondent violated *N.J.S.A. 18A:12-24(b)* because he used his position on the Board to obtain recognition, a gift and an award; *N.J.S.A. 18A:12-24.1(b)* because he willfully made a decision contrary to the educational welfare of children; *N.J.S.A. 18A:12-24.1(c)* because he took Board action to effectuate policies and plans without consulting those affected by such policies and plans; *N.J.S.A. 18A:12-24.1(e)* because he made statements and recommendations to abolish the policy at the urging of a political party; and *N.J.S.A. 18A:12-24.1(f)* because he took action on behalf of a special interest political group, to the benefit of the Board members’ campaign which he was supporting.

In Count 5, Complainant asserts that on September 14, 2023, Respondent reposted a link that the mayor posted on the Hardyston Republican Club social media page, which questioned the State mandated health curriculum. Complainant further asserts Respondent violated *N.J.S.A. 18A:12-24.1(b)* because his social media page notes that he is a Board member and he took deliberate action to campaign against the State standards, which are designed to meet the needs of all children; and *N.J.S.A. 18A:12-24(c)* because he has both a direct and indirect financial involvement for the organization which he has interest, and shared a document which clearly indicated that his independence of judgment was compromised.

In Count 6, Complainant maintains that on October 7 and 8, 2023, Respondent posted the award that he received from the Republican party, and also posted links for the agenda of the next Board meeting encouraging the public to come to the meeting. Complainant maintains Respondent’s actions violate *N.J.S.A. 18A:12-24.1(b)* because he took deliberate action to obstruct the policies designed to meet the individual needs of all children, *N.J.S.A. 18A:12-24.1(e)* because he took actions beyond the scope of his duties that had the potential to compromise the Board; and *N.J.S.A. 18A:12-24.1(f)* because he took this action for those united in opinion, political party or cause to acquire a benefit for a friend’s campaign.

In Count 7, Complainant asserts at a Board meeting on October 10, 2023, and after voting to take Policy 5756 out of committee, Respondent then voted against a motion to table abolishing the Policy, prior to receiving legal advice and prior to consulting those who would be impacted by abolishing the Policy. Complainant further asserts Respondent’s actions violated *N.J.S.A. 18A:12-24.1(b)* because he willfully made a decision contrary to the educational welfare of children and took deliberate action to obstruct the programs designed to meet the needs of all children; *N.J.S.A. 18A:12-24.1(c)* because he took action to effectuate policies and plans without consulting those affected by the plans and he wanted to vote on an item without consulting with Board counsel; and *N.J.S.A. 18A:12-24.1(f)* because he took this action for those united in opinion or political party to create a benefit for his friend.

In Count 8, Complainant contends that also at the October 10, 2023, meeting, Respondent made a comment about an updated sick policy, stating the teachers would abuse that policy to

take a sick day to go to the beach. Thereafter, on October 12, Respondent received an email from the Superintendent noting that the teachers who were in the audience that evening were “very offended” about his sick day comment, to which Respondent replied and made it clear that he does not answer to the teachers, but rather the taxpayers. Complainant contends Respondent violated *N.J.S.A.* 18A:12-24.1(e) because he took action that had the potential to compromise the Board, and *N.J.S.A.* 18A:12-24.1(i) because he took deliberate action which resulted in the undermining, opposing, compromising, or harming school personnel.

In Count 9, Complainant maintains that on November 2, 2023, Respondent posted on his social media page, which clearly identifies him as a Board member, endorsements for Board candidates, and denouncing the required health standards, suggesting that they violate the laws against discrimination related to the bathrooms. Complainant further maintains this behavior violates *N.J.S.A.* 18A:12-24(b) because on his social media account, which notes that he is a Board member, he took action to secure unwarranted advantages to the benefit of others; *N.J.S.A.* 18A:12-24(c) because he has direct and indirect financial involvement for the organization for which he has interest; *N.J.S.A.* 18A:12-24.1(e) because he took actions beyond the scope of his duties that had the potential to compromise the Board by publicly backing a political candidate endorsed by the local and county political party in a non-partisan election; and *N.J.S.A.* 18A:12-24.1(f) because he took action on behalf of a friend’s campaign and a special interest group (Sussex County GOP) for the benefit of their preferred candidates in a non-partisan election.

In Count 10, Complainant asserts that on November 8, 2023, Respondent again posted about the election and the schools, and “called the school’s budget ‘bloated’ and stated more than 50% of the students are failing.” Complainant further asserts Respondent violated *N.J.S.A.* 18A:12-24.1(b) because he willfully made a decision contrary to the educational welfare of children and took deliberate action to obstruct the policies designed to meet the needs of all children; and *N.J.S.A.* 18A:12-24.1(e) because he took action by making statements that had the potential to compromise the Board.

Finally, in Count 11, Complainant contends that Respondent once again posted to his social media account, which identifies him as a Board member, reporting how each Board member voted with respect to tabling the abolishment of Policy 5756. Complainant opines that the vote was against parental rights, in violation of *N.J.S.A.* 18A:12-24.1(b)¹ because he willfully made a decision contrary to the educational welfare of children and took deliberate action to obstruct the policies designed to meet the needs of all children; *N.J.S.A.* 18A:12-24.1(c) because he took Board action to abolish a policy without consulting those effected by the policy; *N.J.S.A.* 18A:12-24.1(e) because he continues to act on behalf of a political party based on promises made, and posting the voting record and a statement indicating why members voted a certain way is an attempt to intimidate and harass the Board members who did not follow his vote; and *N.J.S.A.* 18A:12-24.1(f) because he continues to act on behalf of a political party based on promises made, about the need to abolish the policy, sharing the post for the benefit of a Board candidate.

¹ While Count 11 of the Complaint states that Respondent violated *N.J.S.A.* 18A:12-24(b) and *N.J.S.A.* 18A:12-24(c), it is clear from the language that Complainant intended to allege *N.J.S.A.* 18A:12-24.1(b) and *N.J.S.A.* 18A:12-24.1(c).

B. *Written Statement and Allegation of Frivolous Filing*

Respondent denies “all allegations” in the Complaint and notes that the Complaint is frivolous because Complainant was “motivated by her jealous reaction at all the Kids First landslide victor[ies] in 2022.” Finally, Respondent notes, “there is a contentious relationship between [Board] members that now have led to two additional ethics violation accusations, and another on the way.”

C. *Response to Allegation of Frivolous Filing*

Complainant argues she has “[s]ubstantial evidence [that] suggests [Respondent] breached several provisions of the ethics law.” Complainant further argues that the matter should be adjudicated on its merits because Respondent has “failed to present any counterevidence.” Finally, Complainant notes Respondent’s “declaration of voting in-line with his electoral mandate . . . implies a disregard for the necessity of independence of judgment in decision-making.”

III. Analysis

This matter is before the Commission for a determination of probable cause pursuant to *N.J.A.C. 6A:28-9.7*. A finding of probable cause is not an adjudication on the merits but, rather, an initial review whereupon the Commission makes a preliminary determination as to whether the matter should proceed to an adjudication on the merits, or whether further review is not warranted. Pursuant to *N.J.A.C. 6A:28-9.7(a)*, probable cause “shall be found when the facts and circumstances presented in the complaint and written statement would lead a reasonable person to believe that the Act has been violated.”

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(b)*, *N.J.S.A. 18A:12-24(c)*, and *N.J.S.A. 18A:12-24(e)*. These provisions of the Act state:

b. No school official shall use or attempt to use his official position to secure unwarranted privileges, advantages or employment for himself, members of his immediate family or others;

c. No school official shall act in his official capacity in any matter where he, a member of his immediate family, or a business organization in which he has an interest, has a direct or indirect financial involvement that might reasonably be expected to impair his objectivity or independence of judgment. No school official shall act in his official capacity in any matter where he or a member of his immediate family has a personal involvement that is or creates some benefit to the school official or member of his immediate family;

e. No school official, or member of his immediate family, or business organization in which he 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 his 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 his official duties;

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

To credit a violation of *N.J.S.A. 18A:12-24(c)*, Complainant must provide sufficient factual evidence that Respondent acted in his official capacity in a matter where he, or a member of his immediate family, had a direct or indirect financial involvement that might reasonably be expected to impair his objectivity, or in a matter where he had a personal involvement that created some benefit to him, or to a member of his immediate family.

To credit a violation of *N.J.S.A. 18A:12-24(e)*, Complainant must provide sufficient factual evidence that Respondent, a member of his immediate family, or a business organization in which he had 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 him, directly or indirectly, in the discharge of his official duties.

Complainant further submits that Respondent violated *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)*. These provisions of the Code provide:

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.

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(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/or *N.J.S.A.* 18A:12-24.1(i), need to be supported by certain factual evidence, more specifically:

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.

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.

As a preliminary matter, the Commission finds it necessary to set forth the framework by which it will review the allegations in this matter that involve social media posts. The Commission has explained that in order for a social media post to be offered pursuant to official

duties, there must be a sufficient nexus between the social media page and the role/membership on the Board. *Hodrinsky v. Faussette, Hasbrouck Heights Board of Education, Bergen County*, Docket No. C11-21 (August 30, 2021); *Donnerstag, et al. v. Borawksi, Central Regional Board of Education, Ocean County*, Docket No. C20-22 (August 22, 2023); *Donnerstag, et al. v. Koenig, Central Regional Board of Education, Ocean County*, Docket No. C19-22 (August 22, 2023). Additionally, as the Commission explained in *Aziz v. Nikitinsky et al., Monroe Township Board of Education, Middlesex County*, Docket No. C56-22 (October 17, 2022):

As a general matter, a school official does not violate the Act merely because he/she engages in social media activity. Instead, the Commission’s analysis is guided by whether a reasonable member of the public could perceive that the school official is speaking in his or her official capacity or pursuant to his or her official duties. Whether a school official is perceived as speaking in his or her official capacity and pursuant to his or her official duties turns, in large part, on the content of the speech. If the speech in question has absolutely no correlation or relationship to the business of the Board and/or its operations and, therefore, could not possibly be regarded as a statement or position on behalf of the Board (as a body), a school official will not violate the Act. Conversely, if the speech in question *does* relate to the business of the Board and/or its operations, it is then reasonable for the reader to perceive the speech as being offered in an official capacity and pursuant to his or her official duties. Nonetheless, the filing party would still need to prove *all* elements of the cited provision of the Act ...

Moreover, the use of a disclaimer on social media can help to clarify whether an individual is speaking in his or her official capacity and pursuant to his or her official duties; however, the presence of a disclaimer is not dispositive. In previous advisory opinions and decisions, the Commission has stated that disclaimers such as, “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” would be appropriate. *Advisory Opinion A36-14* (October 29, 2014); [*I/M/O Treston, Randolph Township Board of Education, Morris County*, Docket No. C71-18 (April 27, 2021)]. The failure of a school official to parrot the exact language recommended by the Commission will not mean, without more, that he or she did not use an appropriate disclaimer. In addition, if a school official utilizes an appropriate disclaimer, but the content or substance of the statements would still lead a reasonable member of the public to believe that the school official is speaking in his or her official capacity or pursuant to his or her official duties, then the disclaimer will be inadequate and of no force or effect, and the social media activity could violate the Act. *See I/M/O Treston*.

The Commission notes that the social media page referenced in the Complaint is Respondent's personal page and is not a campaign or Board member page. While his profile includes reference to his Board membership in the "About" section, which includes biographical and work history information, it does not outwardly display his Board status. As such, the Commission must evaluate the content of each post in order to determine if there is a nexus between the post and Respondent's role as a Board member, and whether a reasonable person would perceive the speech as being offered in an official capacity and pursuant to his official duties.

Count 1

In Count 1, Complainant argues that Respondent violated *N.J.S.A. 18A:12-24(b)*, *N.J.S.A. 18A:12-24(c)*, *N.J.S.A. 18A:12-24.1(e)* and *N.J.S.A. 18A:12-24.1(f)* when he shared a post on social media from the Sussex County GOP in support of three candidates for the upcoming Board election.

After review, the Commission finds that there are insufficient facts and circumstances presented in the Complaint and the Written Statement to lead a reasonable person to believe that *N.J.S.A. 18A:12-24(b)*, *N.J.S.A. 18A:12-24(c)*, *N.J.S.A. 18A:12-24.1(e)* and/or *N.J.S.A. 18A:12-24.1(f)* were violated in Count 1. The post at issue was a campaign image that named three candidates for the Board, and Respondent did not provide any further comment or invoke his Board member status. The image lacks a sufficient nexus to Respondent's membership on the Board, and a reasonable member of the public would not perceive that, in sharing an image for a campaign in this context, Respondent was speaking in his official capacity as a Board member. Therefore, Respondent did not use his official position to secure an unwarranted privilege or advantage, or act in his official capacity in a matter that creates a benefit. Additionally, Respondent's post was not action beyond the scope of this duty that has the potential to compromise the Board, nor is it action on behalf of a special interest group or political party. Consequently, and pursuant to *N.J.A.C. 6A:28-9.7(b)*, the Commission dismisses the alleged violations of *N.J.S.A. 18A:12-24(b)*, *N.J.S.A. 18A:12-24(c)*, *N.J.S.A. 18A:12-24.1(e)* and *N.J.S.A. 18A:12-24.1(f)* in Count 1.

Count 2

In Count 2, Complainant contends that Respondent violated *N.J.S.A. 18A:12-24.1(e)* and *N.J.S.A. 18A:12-24.1(f)* when he shared a link on his social media account to a political fundraising event, encouraged people to join, and "announce[d] he [would] be receiving an award, as well as the other Kid's First candidates at the event for advocating for parental rights."

Following its assessment, the Commission finds that there are insufficient facts and circumstances presented in the Complaint and the Written Statement to lead a reasonable person to believe that *N.J.S.A. 18A:12-24.1(e)* and/or *N.J.S.A. 18A:12-24.1(f)* were violated in Count 2. Respondent's receipt of an award for parental rights from the Sussex GOP was in his capacity as a private citizen, and posting about the event to encourage attendance was not action beyond the scope of his duties as Board member, nor did it have the potential to compromise the Board. Additionally, it does not constitute action in his role as a Board member on behalf of, or at the

request of, a political party. Accordingly, and pursuant to *N.J.A.C.* 6A:28-9.7(b), the Commission dismisses the alleged violations of *N.J.S.A.* 18A:12-24.1(e) and *N.J.S.A.* 18A:12-24.1(f) in Count 2.

Count 3

In Count 3, Complainant asserts that Respondent violated *N.J.S.A.* 18A:12-24(b), *N.J.S.A.* 18A:12-24(e), *N.J.S.A.* 18A:12-24.1(e) and *N.J.S.A.* 18A:12-24.1(f) when he used his position on the Board to obtain an award, gift and recognition from the Sussex County GOP, and then five days later continued to push the agenda of the political party and speakers from the event in a process to abolish Policy 5756.

Based on its review, the Commission finds that there are insufficient facts and circumstances presented in the Complaint and the Written Statement to lead a reasonable person to believe that *N.J.S.A.* 18A:12-24(b), *N.J.S.A.* 18A:12-24(e), *N.J.S.A.* 18A:12-24.1(e) and/or *N.J.S.A.* 18A:12-24.1(f) were violated in Count 3. As to *N.J.S.A.* 18A:12-24(b), Respondent's receipt of an award for parental rights from the Sussex GOP was in his capacity as a private citizen, and Complainant fails to demonstrate how Respondent used his Board position to secure an unwarranted privilege, advantage, or employment. Regarding *N.J.S.A.* 18A:12-24(e), Complainant has not provided sufficient factual evidence, beyond speculation, that Respondent accepted the award *based on an understanding* that it was being given for the purpose of influencing him to abolish Policy 5756. With respect to *N.J.S.A.* 18A:12-24.1(e), the Complaint also lacks factual support, beyond inferences as to the timing of the awards ceremony and the efforts to abolish Policy 5756, that Respondent made any personal promises to the Sussex GOP. Finally, the Commission notes, as to *N.J.S.A.* 18A:12-24.1(f), an individual who receives an award for their support of an issue would naturally have similar beliefs as the organization honoring them, but that does not demonstrate that the individual took action, *on behalf of, or at the request of*, the special interest or political group, and as such, Complainant has not demonstrated that Respondent surrendered his independent judgment. Therefore, and pursuant to *N.J.A.C.* 6A:28-9.7(b), the Commission dismisses the alleged violations of *N.J.S.A.* 18A:12-24(b), *N.J.S.A.* 18A:12-24(e), *N.J.S.A.* 18A:12-24.1(e) and *N.J.S.A.* 18A:12-24.1(f) in Count 3.

Count 4

In Count 4, Complainant contends that Respondent violated *N.J.S.A.* 18A:12-24(b), *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) and *N.J.S.A.* 18A:12-24.1(f) when he read a statement at a Board meeting regarding the need to abolish Policy 5756 at the urging of the Sussex GOP because it "mirrored the talking points" from the award ceremony.

After review, the Commission finds that there are insufficient facts and circumstances presented in the Complaint and the Written Statement to lead a reasonable person to believe that *N.J.S.A.* 18A:12-24(b), *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) and/or *N.J.S.A.* 18A:12-24.1(f) were violated in Count 4. Respondent is permitted to speak at a Board meeting and express his opinion on Board matters, and whether those opinions are similar to those of an organization he supports does not establish that he made the statements at the request of the political party. Accordingly, the Complaint does not demonstrate that

Respondent used his Board position to obtain a privilege or advantage, made decisions contrary to the welfare of children, took Board action to effectuate plans without consulting those affected, made personal promises or took action that may compromise the Board, or took action on behalf of a special interest or political group. Consequently, and pursuant to *N.J.A.C. 6A:28-9.7(b)*, the Commission dismisses the alleged violations of *N.J.S.A. 18A:12-24(b)*, *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)* and *N.J.S.A. 18A:12-24.1(f)* in Count 4.

Count 5

In Count 5, Complainant argues Respondent violated *N.J.S.A. 18A:12-24(c)* and *N.J.S.A. 18A:12-24.1(b)* when he shared a post on social media, that included a link questioning the State mandated health curriculum.

Following its assessment, the Commission finds that there are insufficient facts and circumstances presented in the Complaint and the Written Statement to lead a reasonable person to believe that *N.J.S.A. 18A:12-24(c)* and/or *N.J.S.A. 18A:12-24.1(b)* were violated in Count 5. The Commission notes that the link shared did not include any further commentary from Respondent, but rather was a link to an article about the health education mandate. Respondent did not reference or invoke his Board member status, and therefore, sharing the link to the article, in this circumstance, lacks a sufficient nexus to Respondent's membership on the Board, and a reasonable member of the public would not perceive that Respondent was speaking in his official capacity as a Board member. Additionally, Respondent's post does not constitute action in his official capacity in a matter where he has a financial or personal involvement, or a willful decision contrary to the educational welfare of children. Accordingly, and pursuant to *N.J.A.C. 6A:28-9.7(b)*, the Commission dismisses the alleged violations *N.J.S.A. 18A:12-24(c)* and *N.J.S.A. 18A:12-24.1(b)* in Count 5.

Count 6

In Count 6, Complainant argues Respondent violated *N.J.S.A. 18A:12-24.1(b)*, *N.J.S.A. 18A:12-24.1(e)* and *N.J.S.A. 18A:12-24.1(f)* when he posted the award that he received from the Sussex GOP, and also posted links for the agenda of the next Board meeting encouraging the public to come to the meeting.

Based on its review, the Commission finds that there are insufficient facts and circumstances presented in the Complaint and the Written Statement to lead a reasonable person to believe that *N.J.S.A. 18A:12-24.1(b)*, *N.J.S.A. 18A:12-24.1(e)* and/or *N.J.S.A. 18A:12-24.1(f)* were violated in Count 6. Notably, the posts involving the award and the agenda for the Board meeting were two separate posts. The Commission does not have a concern with Respondent posting a copy of the award that he received from the Sussex GOP on his social media. The award was received in his capacity as a private citizen, and the post does not invoke his Board status. As to the Board agenda, Respondent posted a link to the meeting agenda, with the comment, "Hardyston BOE meeting this Tuesday – Agenda attached." Even if this post may arguably be in the Respondent's capacity as a Board member, Board members are permitted to inform the public about an upcoming Board meeting. Notably, the post did not reference his

beliefs on any issues on the agenda, or encourage people to come to the meeting regarding a specific issue. The Commission finds Respondent's posts involving his award and the Board agenda were not willful action to obstruct the policies designed to meet the individual needs of children, action to effectuate policies and plans without consulting those affected, or action on behalf of a political party. Therefore, and pursuant to *N.J.A.C. 6A:28-9.7(b)*, the Commission dismisses the alleged violations of *N.J.S.A. 18A:12-24.1(b)*, *N.J.S.A. 18A:12-24.1(e)* and *N.J.S.A. 18A:12-24.1(f)* in Count 6.

Count 7

In Count 7, Complainant contends that Respondent violated *N.J.S.A. 18A:12-24.1(b)*, *N.J.S.A. 18A:12-24.1(c)*, and *N.J.S.A. 18A:12-24.1(f)* when he voted against a motion to table abolishing Policy 5756 so that the Board could receive legal advice.

After review, the Commission finds that there are insufficient facts and circumstances presented in the Complaint and the Written Statement to lead a reasonable person to believe that *N.J.S.A. 18A:12-24.1(b)*, *N.J.S.A. 18A:12-24.1(c)*, and/or *N.J.S.A. 18A:12-24.1(f)* were violated in Count 7. Board members are permitted to vote according to their beliefs, and a vote against tabling a matter is not an ethical violation. Further, Respondent's vote was not a willful decision contrary to the educational welfare of students or deliberate action to obstruct the programs designed to meet the needs of children, official action to effectuate policies without consulting those affected, or action on behalf of or at the request of a political party. Consequently, and pursuant to *N.J.A.C. 6A:28-9.7(b)*, the Commission dismisses the alleged violations of *N.J.S.A. 18A:12-24.1(b)*, *N.J.S.A. 18A:12-24.1(c)*, and *N.J.S.A. 18A:12-24.1(f)* in Count 7.

Count 8

In Count 8, Complainant argues that Respondent violate *N.J.S.A. 18A:12-24.1(e)* and *N.J.S.A. 18A:12-24.1(i)* when he stated at a Board meeting that teachers would abuse an updated sick policy to take a sick day to go to the beach, and then told the Superintendent that he does not answer to the teachers, but rather to the taxpayers.

Following its assessment, the Commission finds that there are insufficient facts and circumstances presented in the Complaint and the Written Statement to lead a reasonable person to believe that *N.J.S.A. 18A:12-24.1(e)* and/or *N.J.S.A. 18A:12-24.1(i)* were violated in Count 8. Respondent is entitled to make statements and/or take a position on a matter publicly at a Board meeting that is contrary to the opinion of other Board members or school administration/personnel. Specifically, Respondent's opinion on the sick leave policy, and his thoughts on what would occur if the policy was implemented, is not action beyond the scope of his duty that has the potential to compromise the Board, nor does it amount to deliberate action which resulted in the undermining, opposing, compromising, or harming school personnel. Accordingly, and pursuant to *N.J.A.C. 6A:28-9.7(b)*, the Commission dismisses the alleged violation(s) of *N.J.S.A. 18A:12-24.1(e)* and *N.J.S.A. 18A:12-24.1(i)* in Count 8.

Count 9

In Count 9, Complainant asserts Respondent violated *N.J.S.A. 18A:12-24(b)*, *N.J.S.A. 18A:12-24(c)*, *N.J.S.A. 18A:12-24.1(e)* and *N.J.S.A. 18A:12-24.1(f)* when he posted endorsements on his social media page for Board candidates, denouncing the required health education standards.

Based on its review, the Commission finds that there are insufficient facts and circumstances presented in the Complaint and the Written Statement to lead a reasonable person to believe that *N.J.S.A. 18A:12-24(b)*, *N.J.S.A. 18A:12-24(c)*, *N.J.S.A. 18A:12-24.1(e)* and/or *N.J.S.A. 18A:12-24.1(f)* were violated in Count 9. The Commission notes that the two posts were election ballots with the candidates circled that Respondent supported, and the posts included a disclaimer indicating that the endorsements were “[m]y personal opinion” and to inform the public which candidates were “traditional.” Given that Respondent used disclaimers, a reasonable member of the public would not perceive that he was speaking in his official capacity or pursuant to his official duties, and as such, was not an attempt to secure an unwarranted privilege or advantage; that it was action in his official capacity in a matter where he has a financial or personal involvement; that it was action beyond the scope of his duties that had the potential to compromise the Board, nor action on behalf of, or at the request of, a political party. Therefore, and pursuant to *N.J.A.C. 6A:28-9.7(b)*, the Commission dismisses the alleged violations of *N.J.S.A. 18A:12-24(b)*, *N.J.S.A. 18A:12-24(c)*, *N.J.S.A. 18A:12-24.1(e)* and *N.J.S.A. 18A:12-24.1(f)* in Count 9.

Count 10

In Count 10, Complainant argues that Respondent violated *N.J.S.A. 18A:12-24.1(b)* and *N.J.S.A. 18A:12-24.1(e)* when he posted on social media and “called the school’s budget ‘bloated’ and stated more than 50% of the students are failing.”

The post congratulated a candidate on reelection and then stated, “I look forward to continuing to work with you to reduce the bloated BOE budget as we help the 50% of our students who are failing the NJ State standardized tests to pass them.” The Commission finds that, given that the content of the speech, which implies that Respondent is a Board member and mentions the Board’s budget and standardized tests, there is a nexus between Respondent’s social media post and his Board membership, and a reasonable member of the public may perceive that he was speaking in his official capacity.

Although it appears that the social media post was made in Respondent’s official capacity as a Board member, the Commission finds that there are insufficient facts and circumstances presented in the Complaint and the Written Statement to lead a reasonable person to believe that *N.J.S.A. 18A:12-24.1(b)* and/or *N.J.S.A. 18A:12-24.1(e)* were violated in Count 10. As to *N.J.S.A. 18A:12-24.1(b)*, a statement about reducing the budget and helping students to pass standardized tests is not a decision at all, nor is it contrary to the educational welfare of children or obstructing the programs and policies designed to meet the individual needs of all children. With respect to *N.J.S.A. 18A:12-24.1(e)*, the Commission finds that the content of the speech, a general statement about helping students to pass standardized tests and reduce the budget, does

not have the potential to compromise the Board. Accordingly, and pursuant to *N.J.A.C. 6A:28-9.7(b)*, the Commission dismisses the alleged violations of *N.J.S.A. 18A:12-24.1(b)* and *N.J.S.A. 18A:12-24.1(e)* in Count 10.

Count 11

In Count 11, Complainant contends that Respondent violated *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)*, and *N.J.S.A. 18A:12-24.1(f)* when he shared a post indicating how each board member voted at the previous night's meeting on the motion to table Policy 5756 "indefinitely."

After review, the Commission finds that there are insufficient facts and circumstances presented in the Complaint and the Written Statement to lead a reasonable person to believe that *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)*, and/or *N.J.S.A. 18A:12-24.1(f)* were violated in Count 11. The Commission notes that the post indicating which Board members voted to table Policy 5756, which is public knowledge, was shared, and Respondent did not include any commentary referencing or invoking his Board member status. Without more, the post lacks a nexus to Respondent's role as a Board member, and a reasonable member of the public would not perceive that the post was in Respondent's official capacity. As such, Respondent's post does not constitute a decision contrary to the educational welfare of children or deliberate action to obstruct the policies designed to meet the needs of all children, Board action to abolish a policy without consulting those effected, action beyond the scope of his duties that has the potential to compromise the Board, or action on behalf of, or at the request of, a political party. Therefore, and pursuant to *N.J.A.C. 6A:28-9.7(b)*, the Commission dismisses the alleged 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)*, and *N.J.S.A. 18A:12-24.1(f)* in Count 11.

IV. Request for Sanctions

At its meeting on May 21, 2024, 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 special meeting on June 17, 2024, the Commission adopted a decision finding the Complaint not frivolous, and denying the request for sanctions.

V. Decision

In accordance with *N.J.S.A. 18A:12-29(b)*, and for the reasons detailed herein, the Commission hereby notifies Complainant and Respondent that there are insufficient facts and circumstances pled in the Complaint and in the Written Statement to lead a reasonable person to believe that the Act was violated as alleged in the Complaint and, consequently, dismisses the

above-captioned matter. *N.J.A.C.* 6A:28-9.7(b). The Commission further advises the parties that, following its review, it voted to find that the Complaint is not frivolous, and to deny Respondent's request for sanctions.

The within 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)*. Under *New Jersey Court Rule 2:4-1(b)*, a notice of appeal must be filed with the Appellate Division within 45 days from the date of mailing of this decision.

Robert W. Bender, Chairperson

Mailing Date: June 17, 2024

***Resolution Adopting Decision
in Connection with C88-23***

Whereas, at its meeting on May 21, 2024, the School Ethics Commission (Commission) considered the Complaint, the Written Statement and allegation of frivolous filing, and the response to the allegation of frivolous filing submitted in connection with the above-referenced matter; and

Whereas, at its meeting on May 21, 2024, the Commission discussed finding that the facts and circumstances presented in the Complaint and the Written Statement would not lead a reasonable person to believe that the Act was violated and, therefore, dismissing the above-captioned matter; and

Whereas, at its meeting on May 21, 2024, the Commission discussed finding the Complaint not frivolous, and denying the request for sanctions; and

Whereas, at its special meeting on June 17, 2024, the Commission reviewed and voted to approve the within decision as accurately memorializing its actions/findings from its meeting on May 21, 2024; 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 special meeting on June 17, 2024.

Brigid C. Martens, Director
School Ethics Commission