

Before the School Ethics Commission
OAL Docket No.: EEC-08798-2021
SEC Docket No.: C18-21
Final Decision

**Rebecca Adams-Paul,
*Complainant***

v.

**Daniel Dilks,
Tabernacle Board of Education, Burlington County,
*Respondent***

I. Procedural History

The above-captioned matter arises from a Complaint that was filed on June 7, 2021, by Rebecca Adams-Paul (Complainant), alleging that Daniel Dilks (Respondent), a member of the Tabernacle Board of Education (Board), violated the School Ethics Act (Act), *N.J.S.A.* 18A:12-21 *et seq.*¹ The Complaint avers that Respondent violated *N.J.S.A.* 18A:12-24.1(e) of the Code of Ethics for School Board Members (Code) in Count 1, violated *N.J.S.A.* 18A:12-24.1(f) of the Code in Count 4, violated *N.J.S.A.* 18A:12-24.1(g) of the Code in Count 6, *N.J.S.A.* 18A:12-24.1(i) of the Code in Count 2 and Count 5, and violated *N.J.S.A.* 18A:12-24.1(j) of the Code in Count 3.

At its meeting on September 21, 2021, and following a review and discussion of the parties' pleadings at a previous meeting, the Commission adopted a decision granting Respondent's Motion to Dismiss in Lieu of Answer (Motion to Dismiss) as to the violations of *N.J.S.A.* 18A:12-24.1(f) (Count 4), *N.J.S.A.* 18A:12-24.1(g) (Count 6), and *N.J.S.A.* 18A:12-24.1(i) (Count 2 and Count 5), and denying the Motion to Dismiss as to the violations of *N.J.S.A.* 18A:12-24.1(e) (Count 1) and *N.J.S.A.* 18A:12-24.1(j) (Count 3). The Commission also adopted a decision finding the Complaint not frivolous and denying Respondent's request for sanctions.

Based on its findings, the Commission also directed Respondent to file an Answer to Complaint (Answer) as to the remaining allegations in the Complaint (*N.J.S.A.* 18A:12-24.1(e) (Count 1) and *N.J.S.A.* 18A:12-24.1(j) (Count 3)), and advised the parties that, following receipt of Respondent's Answer, the within matter would be transmitted to the Office of Administrative Law (OAL).

¹ By correspondence dated June 8, 2021, Complainant was notified that the Complaint was deficient, and required amendment before the School Ethics Commission (Commission) could accept her filing. On June 9, 2021, 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 above-captioned matter was filed with the OAL on October 21, 2021, to be heard as a contested case, and was assigned to the Honorable David M. Fritch, Administrative Law Judge (ALJ Fritch). *Initial Decision* at 1-2. While at the OAL, Complainant filed a Motion for Summary Decision on February 11, 2022, and Respondent filed a response brief and Cross-Motion for Summary Decision on February 28, 2022. *Id.* at 2. On March 14, 2022, Complainant filed a response to Respondent’s Cross-Motion for Summary Decision. *Id.* at 2-3. Because neither party requested oral argument nor filed further submissions, the record on the cross-motions closed on March 14, 2022. *Id.* at 3.

On April 28, 2022, ALJ Fritch issued an *Initial Decision* detailing his findings of fact and legal conclusions on the parties’ Cross-Motions for Summary Decision. The Commission acknowledged receipt of ALJ Fritch’s *Initial Decision* on the date it was issued (April 28, 2022); therefore, the forty-five (45) day statutory period for the Commission to issue a Final Decision was June 13, 2022.² Prior to June 13, 2022, the Commission requested a forty-five (45) day extension of time to issue its decision so as to allow the Commission, which only meets monthly, the opportunity to receive and review the full record, including the parties’ Exceptions (if any). Pursuant to *N.J.S.A.* 52:14B-10(c) and *N.J.A.C.* 1:1-18.8, and for good cause shown, the Commission was granted an extension until July 28, 2022.

At its meeting on June 28, 2022, the Commission considered the full record in this matter. Thereafter, and at its meeting on July 26, 2022, the Commission voted to adopt the findings of fact from ALJ Fritch’s *Initial Decision*; to adopt the legal conclusion that, based on the competent and credible evidence, Complainant met her burden to prove violations of *N.J.S.A.* 18A:12-24.1(e) and *N.J.S.A.* 18A:12-24.1(j); and to adopt the recommended penalty of reprimand.

II. Initial Decision

In the *Initial Decision*, ALJ Fritch found that the following facts are undisputed and, therefore, serve as the *findings of fact* for his decision:

1. Respondent is a Board member, and has a child enrolled in the Tabernacle School District (District).
2. Complainant is employed by the Board as a teaching staff member.
3. At a Board meeting on February 16, 2021, the Superintendent spoke about shifting to full-time, in-person instruction five days per week.
4. At the February 16, 2021, Board meeting, Complainant spoke during public comment regarding health and safety concerns related to COVID-19. More specifically, the minutes provide the following summary of Complainant’s statement, “... teachers understand the importance of being back in school. Cannot overlook the CDC guidelines. Health guidelines should remain in the forefront. Criticism on social media are [sic] installing fear. Spoke in support of assistants.”

² Forty-five (45) days after April 28, 2022, was, technically, Sunday, June 12, 2022; by rule, the deadline is therefore extended until the next business day.

5. Another parent (Ms. O'Hara) who was in favor of the District returning to full-time, in-person instruction also provided a public statement.

6. On February 17, 2021, Respondent received an email from a parent who forwarded screen shots from Complainant's Facebook page (July 23, 2020), indicating that she (Complainant) was traveling to Cancun, Mexico, as well as a posting from March 13, 2020, which "tagged" Complainant "in a photo of four Corona beers." The email also addressed Complainant's comments at the Board meeting (on February 16, 2021), claiming those comments were "disingenuous" and "very contradictory of actions they have taken outside of the school over the past year."

7. On February 17, 2021, Respondent emailed the Superintendent and forwarded the February 17, 2021, email he received (from the parent) regarding "specific concerns about what is now perceived to be the disingenuous nature of certain comments from staff about the health, safety, willingness, or ability to bring more kids back" at the Board meeting in "contradiction in what was stated and what the reality had been for these individuals, outside of the educational setting of our district" based on their images "posted on social media" about "vacations and taking flights out of the country, during the peak infectivity periods" and having "celebratory beer, in a local bar" on a date that "corresponds to the last full day of instruction last year." Respondent further added that he anticipated that the Superintendent "would be having discussion with [his] administrative team on this matter, and then collectively determine how to address from there."

8. On May 7, 2021, Ms. O'Hara sent an email to the Board (including Respondent), using their Board email addresses, which stated, in part: "... many of the teachers just don't want to do what is in the best interest of the kids by putting them in school 5 full days this year ... I'd like to bring to your attention another situation concerning a specific teacher who feels entitled enough to taunt the very people who pay her salary ... This specific teacher decided to pull on the heart strings of everyone on the Jan[uary] [Board] meeting by saying that she and many other teachers had stress and anxiety about coming back to school ... It's the same teacher who was so scared to be back in school, yet supposedly didn't have any anxiety about getting on a plane and going to Mexico for vacation (in the very beginning of the pandemic) ... Same one who supposedly had drinks in the bar with some co-workers"

9. Respondent acknowledges that the "specific teacher" referred to in Ms. O'Hara's email is Complainant.

10. The posts that Ms. O'Hara referred to (in her email) were Complainant's Facebook posts dated July 23, 2020 and March 13, 2020. These were the same posts that were attached to the February 17, 2021, email that Respondent received (from a parent) and then forwarded to the Superintendent.

11. During this same time, Complainant made a post on her personal Facebook page stating, in part: "I haven't been active on here in a while for a reason ... Community members have screenshots of past Facebook posts from a year and more ago from my page that have been sent to my [Board] and [S]uperintendent ... So, I had a drink in a bar outside of school hours with friends before [COVID] was a thing. I also went to Mexico last summer. ... Too bad I have

tenure so you can't get rid of me that easily! So sad how pathetic and hateful some people are ...
."

12. On May 7, 2021, Respondent replied to Ms. O'Hara's email (via his Board email account), in relevant part: "... As a parent of a child in this [D]istrict, I too am appalled at the flippant and hypocritical communication put forth by certain [D]istrict staff ... As a [Board] member, I am equally frustrated, but I also recognize that any action taken by staff is ultimately the responsibility of the Superintendent/administration. I have also received these reports into my [Board] account, and being duty bound, have previously provided them to the admin team for their attention and follow up. This will be for [the Superintendent] to investigate and resolve ... my expectation would be that you would receive an appropriate response from [the Superintendent]."

13. Respondent acknowledges that, in his email to Ms. O'Hara, he was referring to Complainant and Facebook posts and statements she made.

Id. at 3-8.

In the "Legal Discussion" section of his *Initial Decision*, ALJ Fritch **concludes** that, based on the standards set forth in *Brill v. Guardian Life Ins. Co. of America*, 142 N.J. 520, 523 (1995), the above-captioned matter is appropriate/ripe for summary disposition because, "The facts, as set forth by the parties in their respective motions, are supported by tangible, undisputed evidence, and there does not appear to be any dispute of the material facts on the record regarding the material facts at issue" *Id.* at 10.

The remaining contentions in the Complaint are enumerated in Count 3, and include alleged violations of *N.J.S.A.* 18A:12-24.1(e) and *N.J.S.A.* 18A:12-24.1(j). These provisions of the Code provide:

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.

j. I will refer all complaints to the chief administrative officer and will act on the complaints at public meetings only after failure of an administrative solution.

Pursuant to *N.J.A.C.* 6A:28-6.4(a), violations of *N.J.S.A.* 18A:12-24.1(e) and *N.J.S.A.* 18A:12-24.1(j) need to be supported by certain factual evidence, namely:

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.

10. Factual evidence of a violation of *N.J.S.A.* 18A:12-24.1(j) shall include evidence that the respondent(s) acted on or attempted to resolve a complaint, or conducted an investigation or inquiry related to a complaint:

- i. Prior to referral to the chief administrative officer; or
- ii. At a time or place other than a public meeting and prior to the failure of an administrative solution.

Regarding the violation of *N.J.S.A.* 18A:12-24.1(e), ALJ Fritch **concludes** that Respondent’s May 7, 2021, email to Ms. O’Hara “constituted an action taken by [Respondent] in his capacity as a member of the ... Board.” *Id.* at 14. In support of this conclusion, ALJ Fritch notes that Respondent was responding to an email from a District parent that was addressed to the Superintendent and to Board members; the email was sent to Respondent’s Board email address; the email (from Ms. O’Hara) was seeking a response from the Board and the administration, not the input of Board members as fellow parents; Ms. O’Hara’s email asked questions about an issue “within the Board/administration’s direct purview; and although Respondent attempted to “employ qualifiers by prefacing sections of his response,” those “disclaimers are ineffective in attempting to disclaim [Respondent’s] email response as anything other than a response given in his capacity as a Board member.” *Id.* at 11-14.

As to whether Respondent’s actions had the potential to compromise the Board, ALJ Fritch additionally **concludes** that Respondent’s “email comments, made in his capacity as a Board member, in response to a complaint about actions of a District employee, when those actions were under investigation by the school administration, which had not yet taken action on those complaints, was an action beyond the scope of his Board duties that had the potential to compromise the Board in violation of *N.J.S.A.* 18A:12-24.1(e).” *Id.* at 15-16. In support of this conclusion, ALJ Fritch notes that, although the administration was aware of the issues expressed in Ms. O’Hara’s communication, “it is uncontested that the issue had not been resolved by the school administration by the time [Respondent] sent his email response to [Ms.] O’Hara on May 7, 2021”; despite Respondent’s knowledge, based on the contents of his response to Ms. O’Hara, that the issues raised in her (Ms. O’Hara’s) email were pending with the administration, “he nonetheless took action on [Ms.] O’Hara’s email in his capacity as a Board member”; the response to Ms. O’Hara did not just inform her that the Superintendent would be addressing her complaint, it also “made a number of conclusory statements regarding the issues raised,” including characterizing Complainant’s communications as “flippant and hypocritical,” “inflammatory,” and “not in line with the code of conduct we all, as parents, try to instill in our children,” and as “being the source of embarrassment in the District”; the response “contained a number of statements as a Board member expressly condemning” Complainant’s communications, even though same was still being reviewed by the administration; the response commits to Ms. O’Hara receiving an “appropriate response” from the Superintendent; and the “qualifier that [the Superintendent’s] response will be ‘appropriate’ when read in light of [Respondent’s] clear view of [Complainant’s] communications ... clearly indicate that [Respondent] is expecting that [the Superintendent’s] eventual ‘appropriate’ response will not likely to [(sic)] be favorable for [Complainant] despite the investigation into the conduct in question still being an ongoing one.” *Id.* at 14-15. In short, Respondent’s response to Ms. O’Hara “potentially compromised the Board by expressing, in writing, the unequivocal judgment of a sitting Board member on a matter that was still pending administrative investigation and action.” *Id.* at 15.

Regarding the violation of *N.J.S.A.* 18A:12-24.1(j), ALJ Fritch **concludes** that Respondent acted on Ms. O’Hara’s complaint by sending a response to her on May 7, 2021. *Id.*

at 17. The basis for ALJ Fritch’s determination is that, “The email that [Respondent] sent in response to [Ms.] O’Hara’s complaint, however, was not merely forwarding the complaint to the ... administration for action, it was a response to the parent expressing [Respondent’s] views on the matter and noting that he expected the administration to provide an ‘appropriate response’ to [Ms.] O’Hara.” *Id.*

ALJ Fritch additionally **concludes** that Respondent’s May 7, 2021, response to Ms. O’Hara constituted action at a time or place other than a public board meeting and prior to the failure of an administrative solution. *Id.* at 17-18. In support of this conclusion, ALJ Fritch notes that while the Superintendent was copied on Ms. O’Hara’s email, “there is no indication that [Ms. O’Hara’s] email complaint was specifically referred to [the] Superintendent ... for action prior to [Respondent’s] email to [Ms.] O’Hara on May 7, 2021,” and, even if the Superintendent was aware of the issue concerning Complainant’s communication, before Ms. O’Hara’s email was received, “it is undisputed that the administration had not taken action on this matter” at the time Respondent’s response was sent, or that an administrative solution had failed. As such, ALJ Fritch **concludes** Complainant met her burden to prove, by a preponderance of the competent and credible evidence, that Respondent violated *N.J.S.A.* 18A:12-24.1(j). *Id.*

Turning to the issue of penalty, ALJ Fritch notes that Complainant “seeks to recommend a penalty of ‘no less than six months if Respondent is at any time a member of the Board and censure if he is not a member of the Board.’” *Id.* at 18. However, based on a review of the circumstances in which the Commission has recommended “serious penalties,” ALJ Fritch **concludes** that, because “this is the first violation by ... [R]espondent”; “the communication in question was a one-time act and did not improperly convey any confidential or otherwise inaccurate information about [Complainant] which would justify more serious sanctions”; and was a “one-time discreet act which inappropriately conveyed the [R]espondent’s personal opinions in his capacity as a Board member in an email to a concerned parent on a matter involving a Board employee that was pending investigation and action by the [D]istrict’s administration,” a penalty of **reprimand** is appropriate. *Id.* at 18-19.

III. Exceptions

Neither Complainant nor Respondent filed Exceptions to the *Initial Decision*.

IV. Analysis

Upon a careful, thorough, and independent review of the record, the Commission **adopts** ALJ Fritch's findings of fact, and **adopts** the legal conclusion that Respondent violated *N.J.S.A.* 18A:12-24.1(e) and *N.J.S.A.* 18A:12-24.1(j).

In finding a violation of *N.J.S.A.* 18A:12-24.1(e), ALJ Fritch correctly determined that, given the means through which he received the complaint, and regardless of his attempt to qualify the capacity in which he was responding to Ms. O'Hara's email, Respondent's email response to Ms. O'Hara on May 7, 2021, "constituted an action taken by [Respondent] in his capacity as a member of the ... Board." Moreover, because Respondent offered his personal opinion (in his capacity as a Board member) on a matter that was being reviewed by the administration, and characterized Complainant's conduct in a way which seemed to suggest that the Superintendent would, like Ms. O'Hara and Respondent, regard Complainant's behavior as inappropriate, his email response to Ms. O'Hara on May 7, 2021, also had the potential to compromise the Board.

In addition, the Commission agrees that by responding to Ms. O'Hara's email at a time when the subject of her (Ms. O'Hara's) complaint was actively pending with the administration and a final determination had not yet been rendered, Respondent acted on Ms. O'Hara's complaint at a time or place other than a public board meeting and prior to the failure of an administrative solution in violation of *N.J.S.A.* 18A:12-24.1(j).

V. Decision

The Commission **adopts** the findings of fact from the *Initial Decision*, **adopts** the legal conclusion that Respondent violated *N.J.S.A.* 18A:12-24.1(e) and *N.J.S.A.* 18A:12-24.1(j), and agrees that the violations of *N.J.S.A.* 18A:12-24.1(e) and *N.J.S.A.* 18A:12-24.1(j) are supported by a preponderance of the competent and credible evidence.

VI. Penalty

For the reasons relied upon by ALJ Fritch in his *Initial Decision*, namely that "this is the first violation by ... [R]espondent"; "the communication in question was a one-time act and did not improperly convey any confidential or otherwise inaccurate information about [Complainant] which would justify more serious sanctions"; and was a "one-time discreet act which inappropriately conveyed the [R]espondent's personal opinions in his capacity as a Board member in an email to a concerned parent on a matter involving a Board employee that was pending investigation and action by the [D]istrict's administration," the Commission **adopts** the recommended penalty of **reprimand**.

Pursuant to *N.J.S.A.* 18A:12-29(c), this decision shall be forwarded to the Commissioner for review of the Commission's recommended sanctions. Parties may either: 1) file exceptions to the recommended sanction; 2) file an appeal of the Commission's findings of violations of the Act; or 3) file both exceptions to the recommended sanction and an appeal of the Commission's findings of violations of the Act.

Parties taking exception to the recommended sanctions of the Commission but *not disputing* the Commission's findings of violations may file, within **thirteen (13) days** from the

date the Commission's decision is forwarded to the Commissioner, written exceptions regarding the recommended sanctions to the Commissioner. The forwarding date shall be the mailing date to the parties, as indicated below. Such exceptions must be forwarded to: Commissioner of Education, c/o Bureau of Controversies and Disputes, P.O. Box 500, Trenton, New Jersey 08625, marked "Attention: Comments on Ethics Commission Sanction." A copy of any comments filed must be sent to the Commission and all other parties.

Parties seeking to appeal the Commission's findings of violations *must* file an appeal pursuant to the standards set forth at *N.J.A.C. 6A:4, et seq.* within **thirty (30) days** of the filing date of the decision from which the appeal is taken. The filing date shall be three (3) days after the mailing date to the parties, as indicated below. In such cases, the Commissioner's review of the Commission's recommended sanctions will be deferred and incorporated into the Commissioner's review of the findings of violations on appeal. Where a notice of appeal has been filed on or before the due date for exceptions to the Commission's recommended sanction (thirteen (13) days from the date the decision is mailed by the Commission), exceptions need not be filed by that date, but may be incorporated into the appellant's brief on appeal.

Robert W. Bender, Chairperson

Mailing Date: July 26, 2022

***Resolution Adopting Decision
in Connection with C18-21***

Whereas, on or about October 21, 2021, the School Ethics Commission (Commission) transmitted the above-captioned matter to the Office of Administrative Law (OAL) for a hearing; and

Whereas, at the OAL, both Complainant and Respondent filed Motions for Summary Decision; and

Whereas, the Honorable David M. Fritch, Administrative Law Judge (ALJ Fritch) issued an *Initial Decision* dated April 28, 2022; and

Whereas, in his *Initial Decision*, ALJ Fritch issued findings of fact and found that Respondent violated *N.J.S.A.* 18A:12-24.1(e) and *N.J.S.A.* 18A:12-24.1(j); and

Whereas, neither Complainant nor Respondent filed Exceptions to ALJ Fritch's *Initial Decision*; and

Whereas, at its meeting on June 28, 2022, the Commission reviewed and discussed the record; and

Whereas, at its meeting on June 28, 2022, the Commission discussed adopting the findings of fact from the *Initial Decision*, adopting the legal conclusion that Respondent violated *N.J.S.A.* 18A:12-24.1(e) and *N.J.S.A.* 18A:12-24.1(j), and adopting the recommended penalty of reprimand; and

Whereas, at its meeting on July 26, 2022, the Commission reviewed and voted to approve the within decision as accurately memorializing its actions/findings from its meeting on June 28, 2022; and

Now Therefore Be It Resolved, the Commission hereby adopts the within decision.

Robert W. Bender, Chairperson

I hereby certify that the Resolution was duly adopted by the School Ethics Commission at its public meeting on July 26, 2022.

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