

Before the School Ethics Commission
Docket No.: C42-22
Decision on Motion to Dismiss

**Eric Simkin,
Complainant**

v.

**Monica Watson, Marissa Levy, and Rachael Van Aken,
Voorhees Township Board of Education, Camden County,
Respondents**

I. Procedural History

The above-captioned matter arises from a Complaint that was filed on April 7, 2022, by Eric Simkin (Complainant), alleging that Monica Watson (Respondent Watson), Marissa Levy (Respondent Levy), and Rachael Van Aken (Respondent Van Aken) (collectively referred to as Respondents), members of the Voorhees Township Board of Education (Board), violated the School Ethics Act (Act), *N.J.S.A.* 18A:12-21 *et seq.* By correspondence dated April 13, 2022, Complainant was notified that the Complaint was deficient, and required amendment before the School Ethics Commission (Commission) could accept his filing. On April 22, 2022, Complainant cured all defects and filed an Amended Complaint (Complaint) that was deemed compliant with the requirements detailed in *N.J.A.C.* 6A:28-6.3. More specifically, the Complaint avers that Respondents violated *N.J.S.A.* 18A:12-24.1(a) (in Counts 1–6); *N.J.S.A.* 18A:12-24.1(b) (in Count 1 and Counts 3-6); *N.J.S.A.* 18A:12-24.1(c) (in Count 1 and Counts 3-6); *N.J.S.A.* 18A:12-24.1(d) (in Count 4 and Count 6); *N.J.S.A.* 18A:12-24.1(e) (in Counts 1–6); *N.J.S.A.* 18A:12-24.1(f) (in Counts 3-6); *N.J.S.A.* 18A:12-24.1(g) (in Counts 1–2); *N.J.S.A.* 18A:12-24.1(h) (in Count 1 and Count 4); *N.J.S.A.* 18A:12-24.1(i) (in Count 1 and Counts 3–5); and *N.J.S.A.* 18A:12-24.1(j) (in Count 2 and Count 4) of the Code of Ethics for School Board Members (Code).

On April 27, 2022, the Complaint was served on Respondents via electronic mail, notifying them that ethics charges had been filed against them with the Commission, and advising that they had twenty (20) days to file a responsive pleading.¹ On May 20, 2022, Respondents filed a Motion to Dismiss in Lieu of Answer (Motion to Dismiss), and also alleged that the Complaint is frivolous. On June 14, 2022, Complainant filed a response to the Motion to Dismiss and allegation of frivolous filing.

The parties were notified by correspondence dated July 18, 2022, that the above-captioned matter would be discussed by the Commission at its meeting on July 26, 2022, in order to make a determination regarding the Motion to Dismiss and allegation of frivolous filing. Following its discussion on July 26, 2022, the Commission adopted a decision at its meeting on

¹ As a result of the ongoing Coronavirus (COVID-19) pandemic, and the implementation of electronic filing, service of process was effectuated by the Commission through electronic transmission only.

August 23, 2022, granting the Motion to Dismiss in its entirety because Complainant failed to plead sufficient credible facts to support a finding that Respondents violated *N.J.S.A.* 18A:12-24.1(a) (in Counts 1–6); *N.J.S.A.* 18A:12-24.1(b) (in Count 1 and Counts 3–6); *N.J.S.A.* 18A:12-24.1(c) (in Count 1 and Counts 3–6); *N.J.S.A.* 18A:12-24.1(d) (in Count 4 and Count 6); *N.J.S.A.* 18A:12-24.1(e) (in Counts 1–6); *N.J.S.A.* 18A:12-24.1(f) (in Counts 3–6); *N.J.S.A.* 18A:12-24.1(g) (in Counts 1–2); *N.J.S.A.* 18A:12-24.1(h) (in Count 1 and Count 4); *N.J.S.A.* 18A:12-24.1(i) (in Count 1 and Counts 3–5); and/or *N.J.S.A.* 18A:12-24.1(j) (in Count 2 and Count 4). The Commission also adopted a decision finding the Complaint not frivolous and denying Respondents’ request for sanctions.

II. Summary of the Pleadings

A. *The Complaint*

In Count 1, Complainant states he was one of six applicants seeking to be appointed to fill a vacancy on the Board. Three of the other six applicants sought election to the Board in the November 2021 election, but were unsuccessful. On March 16, 2022, the Board conducted “appointment interviews” and a vote (and also voted on the “replacement Superintendent contract”). According to Complainant, and citing the New Jersey School Boards Association’s (NJSBA) Best Practice Suggestions, “there were several infractions against Robert’s Rules of Order, Board [Policy], and the Order of the meeting and the disorder allowed by [Respondents].”

For example, one of the applicants, Ms. Ketover, “is/was ... the Life/Career coach of [Respondent Watson],” and social media posts validate the “[m]entoring relationship, dear friendship, with Ms. Ketover as well as a fierce partnership between [Respondent Watson] and [Respondent] Van Aken” A question was asked (by a Board member) whether the relationship between Ms. Ketover and Respondent Watson made it “ethical” for Respondent Watson “to accept the nomination and vote for Ms. Ketover.” Following a discussion, the appointment process continued.

Of the six applicants, three were nominated; however, none of the nominees received majority vote. The Board solicitor “assured it was fine to repeat the process,” but Complainant, as an applicant, “protested the proceeding, [and] requested a review of Robert’s Rules of Order.” Per Complainant, the election process that occurred on March 16, 2022, “is not how proceedings occur according to [Voorhees Township School District (District)] Policy [and] Robert’s Rules of Order.” Other than an announcement, on April 3, 2022, that “a second election for the Board Vacancy” would occur for two nominees (one who received 4 votes (Ms. Ketover), and the other who received 3), “There has been no notice to any applicant of the format of how the appointment process will work.” As argued by Complainant, “This process is defunct”

With the above in mind, and based on the substance of the Exhibits/evidence submitted in support of his claims, Complainant asserts that Respondents violated *N.J.S.A.* 18A:12-24.1(a), *N.J.S.A.* 18A:12-24.1(b), *N.J.S.A.* 18A:12-24.1(c), *N.J.S.A.* 18A:12-24.1(e), *N.J.S.A.* 18A:12-24.1(g), *N.J.S.A.* 18A:12-24.1(h), and *N.J.S.A.* 18A:12-24.1(i).

In Count 2, Complainant states that, while “making a very professional presentation to the [B]oard” on October 27, 2021, and questioning a conflict of interest for a now resigned

Board member (Respondent Van Aken), Respondent Levy “advise[d] the Board [to] file a restraining order against” Complainant, and accused him (Complainant) of harassment (and later attempted to file a criminal harassment with the police department). When he (Complainant) received a phone call from the assigned detective, he was advised that there was “no evidence of any sort of harassment” (thus, she filed a false police report). Complainant also submits that Respondent Watson “historically allows her personal views and opinions to interfere with impartial judgment and disregarding the public community’s right to be informed in a transparent [and] timely manner.” Based on these facts, and the Exhibits/evidence submitted in support thereof, Complainant argues that Respondents violated *N.J.S.A. 18A:12-24.1(a)*, *N.J.S.A. 18A:12-24.1(e)*, *N.J.S.A. 18A:12-24.1(g)*, and *N.J.S.A. 18A:12-24.1(j)*.

In Count 3, and returning to the Board meeting on March 16, 2022, Complainant states that the Board “is not running in accordance with many [l]aws, Policies, bylaws, statutes and the like.” Complainant submits that, the public “cannot count on a fair and impartial nomination or appointment of a [B]oard member,” as the Board is “being run as a quasi-[e]xecutive [g]overning body,” and Respondent Watson has violated Board Policy by expanding the scope of her powers (as Board President). As such, Complainant alleges that given these facts, and the Exhibits/evidence submitted, Respondents violated *N.J.S.A. 18A:12-24.1(a)*, *N.J.S.A. 18A:12-24.1(b)*, *N.J.S.A. 18A:12-24.1(c)*, *N.J.S.A. 18A:12-24.1(e)*, *N.J.S.A. 18A:12-24.1(f)*, *N.J.S.A. 18A:12-24.1(i)*, and District Policy.

In Count 4, and again returning to the Board meeting on March 16, 2022, Complainant states that Respondents committed “many infractions of various policies, procedures, laws, and [the] Code ...” relative to “Item 17-Personnel” (replacing the Superintendent) and, consequently, violated *N.J.S.A. 18A:12-24.1(a)*, *N.J.S.A. 18A:12-24.1(b)*, *N.J.S.A. 18A:12-24.1(c)*, *N.J.S.A. 18A:12-24.1(d)*, *N.J.S.A. 18A:12-24.1(e)*, *N.J.S.A. 18A:12-24.1(f)*, *N.J.S.A. 18A:12-24.1(h)*, *N.J.S.A. 18A:12-24.1(i)*, and *N.J.S.A. 18A:12-24.1(j)*. In support of these alleged violations, Complainant cites the following facts, and also the Exhibits/evidence submitted in this matter:

- ❖ March 24, 2021, Dr. Gentile (former Superintendent) sent correspondence to parents “outlining the next phase of Restart, Renew, & Engage plan”;
- ❖ May 5, 2021, the Board meets for “less than on hour” and places Dr. Gentile on paid administrative leave effective May 6, 2021, and publicly announced his contract was not being renewed;
- ❖ May 6, 2021, the Board sent correspondence to the community, signed by the Board President and Vice President, Respondent Watson and Respondent Van Aken, respectively, advising of the Board’s intention to non-renew the Superintendent and place him on administrative leave. Complainant notes “the additional signature [(VP)], causes people to reasonably believe the President and Vice President of this [B]oard yield more power than the other members”; indicates that the decision was made after “careful consideration” (but others expressed the desire to have had more time, and executive session was less than an hour); and references the “climate survey” (which was administered directly by the Board, but was anonymous and could be completed, multiple times, by the same staff member).

- ❖ October 14, 2021, the first “meet the candidate event” took place, “incumbents [Respondents] Watson and Van Aken” responded to public inquiries related to the Superintendent search.
- ❖ October 18, 2021, the Voorhees Sun published an article entitled, “Voorhees Schools elaborates on search for Superintendent.” According to Complainant, despite the Board “continuously mention[ing] the transparent nature of the Superintendent Search Process,” the community was not involved “after the engagement phase.” Furthermore, Respondent Watson “refused to disclose a list of questions that were asked to the candidates for the Superintendent position.”
- ❖ January 29, 2022, Complainant was “the sole public attendee to make comments” at the meeting and protested interviews being conducted remotely. At Respondent Watson’s direction, Complainant sent concerns/comments to the Board, but never received a response.
- ❖ March 16, 2022, the contract for the new Superintendent was approved, but was not listed as a separate agenda item (and should have been).

In short, it is Complainant’s position that, “The vote for the approval of [the new Superintendent’s] contract lacks transparency and may not reflect the votes of all members who may have been unaware or had an opportunity to address any concerns about this fact.”

In Count 5, Complainant states that, on February 18, 2022, he notified “Ms. Haley” to advise that the “proposed method of appointing a new member [was] not consistent with laws, policy, and guidelines.” Complainant also requested that Respondent Levy and Respondent Van Aken recuse themselves from voting on who should fill the Board vacancy. Because he (Complainant) was an applicant for the position, and “was bullied, intimidated, silence[d], and had a false police report attempted to be filed against,” him, Complainant does not see how either Respondent Levy or Respondent Van Aken can be impartial. At the Board meeting on February 25, 2022, and after public interviews were conducted, Respondent Watson “brought action 5.1 Board Vacancy Nominations and Comments.” Per Complainant, at this point, the meeting was “conducted out of order,” and contrary to guidelines, District Policies, and guidance from NJSBA; consequently, all votes of the Board “are flawed.” Following this, the new Superintendent was appointed, and then Respondent Van Aken resigned (because she was moving). Given these facts, the Exhibits/evidence submitted, Complainant alleges Respondents violated *N.J.S.A. 18A:12-24.1(a)*, *N.J.S.A. 18A:12-24.1(b)*, *N.J.S.A. 18A:12-24.1(c)*, *N.J.S.A. 18A:12-24.1(e)*, *N.J.S.A. 18A:12-24.1(f)*, and *N.J.S.A. 18A:12-24.1(i)*.

In Count 6, Complainant states that, according to a statement made by the Interim Superintendent at a Board meeting on January 4, 2022, District schools were closed from January 1, 2022, through January 9, 2022, due to, among other reasons, “shortages of staff for food service and bus services.” However, on January 2, 2022, Respondent Watson sent an email to the Board “and possibly staff,” which stated that the reason for the school closure was to “provide everyone an opportunity to quarantine,” and the email purported to be signed by Respondent Watson and Respondent Van Aken. As such, Complainant argues Respondents

violated *N.J.S.A.* 18A:12-24.1(a), *N.J.S.A.* 18A:12-24.1(b), *N.J.S.A.* 18A:12-24.1(c), *N.J.S.A.* 18A:12-24.1(d), *N.J.S.A.* 18A:12-24.1(e), and *N.J.S.A.* 18A:12-24.1(f).

Based on the foregoing, Complainant seeks: removal of Respondent Watson and Respondent Levy; suspension of all votes of Dr. Falk until “such time that a new appointment process can be completed in accordance with all rules, policies, and statutes”; postponement of the process to fill the current vacancy; removal of Board counsel; and set aside of the current Superintendent contract, extension for the interim superintendent, and perhaps the conduction of a new Superintendent search.

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

Following receipt of the Complaint, Respondents filed a Motion to Dismiss and allegation of frivolous filing, and initially argue that the Commission does not have the authority to review Complainant’s claims and moreover, they are “based on a perverted distortion of the underlying actions and ill-will based on his transparent political motives.”

By way of background, Respondents state: Respondent Van Aken is a former Board member as she resigned after moving out of the District; on May 6, 2021, Respondent Watson “on behalf of the Board,” informed the District staff that Dr. David Gentile’s contract would not be renewed, and Mike Redfearn was unanimously appointed as Interim Superintendent; at a Board meeting on August 26, 2020, the Board considered an action item regarding “The Road Back – Plan to Restart, Renew and Engage for the 2020-2021 [school year],” and Respondent Watson and Respondent Van Aken voted against it (because they did not believe the District was prepared to reopen safely at that time); Respondent Watson made a motion, seconded by another Board member to amend the plan (to allow modified return to full-time instruction for most students), but that motion was defeated; on June 14, 2021, the Board approved the Re-Opening plan for the 2021-2022 school year; Respondent Watson, Respondent Van Aken and Ms. Ketover, campaigned together for the three open seats on the Board; at a Board meeting on October 27, 2021, Complainant “politically attacked [Respondent] Van Aken’s credibility/impartiality and criticized” Respondents Watson and Van Aken’s vote on the Reopening plan. Complainant further criticized Respondent Van Aken’s employment with a technology company, and it was revealed that he (Complainant) contacted Respondent Van Aken’s employer to complain about her; Respondent Watson and Respondent Van Aken were elected, but Ms. Ketover was not; at the February 23, 2022 Board meeting, the Board conducted candidate interviews, including of Complainant, in *public session*, and ultimately nominated and appointed Dr. Falk to fill a Board vacancy; and at that same meeting (February 23, 2022), the Board recommended the approval of a contract for a new Superintendent, and Respondent Van Aken resigned from the Board.

Furthermore, at the March 16, 2022, Board meeting, Complainant again spoke publicly, as a candidate for a vacancy on the Board, and was again interviewed in public along with other candidates; after the interviews, three candidates (not Complainant) were nominated for the Board vacancy; the issue of the potential conflict between Respondent Watson and Ms. Ketover was discussed, and Respondent Watson noted that she ceased being a paying customer for Ms. Ketover’s coaching service in 2019; Board counsel advised Respondent Watson did not have a conflict; when none of the nominees received a majority vote, Board counsel advised the process

could be repeated, or the Interim Executive County Superintendent would fill it; because there had been an abstention, a revote was taken; as a majority vote was still not obtained for any nominee, the vacancy was not filled; during the personnel portion of the meeting, the employment contract for the new Superintendent was approved; and, finally, at the Board's April meeting, the Board exercised its right to hold candidate interviews in executive session.

As for the alleged violations of *N.J.S.A.* 18A:12-24.1(a) in Counts 1-6, Respondents argue, "Complainant has provided no final decisions from any court of law, no final decisions from an administrative agency, and provided no court orders pertaining to the schools," and the Commission does not have the authority or jurisdiction to determine whether a Board policy was violated.

Regarding the purported violations of *N.J.S.A.* 18A:12-24.1(b) in Counts 1 and 3-6, "there is simply nothing in the record that would suggest that the [R]espondents made a decision that was contrary to the educational welfare of children; nor is there any evidence that, in any of the alleged actions, the [R]espondents took actions that were inconsistent with their duty to meet individual needs of all children, regardless of their ability, color, creed or social standing," and "any evidence lending to a concern with impartiality regardless of color, sex, or creed, we should look no further than Complainant." In short, there is no evidence that Respondents made a specific "decision" or took "deliberate action."

As for the alleged violations of *N.J.S.A.* 18A:12-24.1(c) in Count 1 and Counts 3-6, Respondents argue there is no evidence that they were acting outside of their designated authority; Respondents were not in the process of framing policies and plans in the present case, but rather "choosing someone to appoint to a ... vacancy when there are no laws or rules that govern precisely how to do so."

Regarding the purported violations of *N.J.S.A.* 18A:12-24.1(d) in Count 4 and Count 6, Respondents argue the Complaint provides no evidence of any direct order made by Respondents to school personnel or that Respondents became involved in activities that are unrelated to their duties as Board Members. In addition, "There is not a scintilla of evidence, which suggests, or could possibly demonstrate, that Respondents gave a direct order to school personnel."

As for the alleged violations of *N.J.S.A.* 18A:12-24.1(e) in Counts 1-6, Respondents argue "Complainant has not demonstrated that [they] made any personal promises (nor indicate the nature of any alleged promise) in connection with the appointment process." Moreover, Complainant has not "demonstrated any evidence that Respondents failed to recognize that authority rests with the Board." Further, even if "Respondents participated in the interview and selection of Dr. Hackett for the Superintendent's position, they did so within the scope of their duties as Board Members." Finally, had private action occurred, which it did not, "Complainant "fails to include any facts that, if true, would suggest that the [R]espondent[s]' [private action] was of such a nature that it might compromise the Board."

Regarding the purported violations of *N.J.S.A.* 18A:12-24.1(f) in Counts 3-6, Respondents assert Complainant failed to identify any "special interest or partisan political group" in this matter. In addition, and despite Complainant's contention that Respondents used

the political process for the gain of friends, he did not provide any evidence to support that Respondents used the appointment process to help anyone.

As for the alleged violations of *N.J.S.A.* 18A:12-24.1(g) in Counts 1-2, Respondents argue, “Complainant has set forth no specific facts that could demonstrate that the Respondents took any steps to disclose confidential information. Nor has Complainant set forth any specific facts that substantiates inaccuracy of information other than personal opinion or being attributable to developing circumstances.”

Regarding the purported violations of *N.J.S.A.* 18A:12-24.1(h) in Count 1 and Count 4, Respondents maintain that Complainant did not provide any evidence to show that Respondents “acted on a personnel matter without a recommendation of the chief administrative officer”; in fact, and in this case, the “Superintendent recommended the approval of Dr. Hackett’s contract.”

As for the alleged violations of *N.J.S.A.* 18A:12-24.1(i) in Count 1 and Counts 3-5, Respondents argue Complainant has “failed to articulate specific factual support for his argument that Respondents took deliberate ‘action’ which resulted in undermining, opposing, compromising, or harming school personnel” nor that any of Respondents’ actions “objectively undermined, opposed, compromised or harmed school personnel.”

Regarding the purported violations of *N.J.S.A.* 18A:12-24.1(j) in Count 2 and Count 4, Respondents argue Complainant “failed to articulate specific factual support for his argument that Respondents acted on or attempted to resolve a complaint, conduct an investigation, or conduct an inquiry related to a complaint prior to referral to the Superintendent or outside of a public meeting prior to the failure of an administrative solution.” In fact, “a majority of [Complainant’s] complaints occurred during the public” Board meetings.

Finally, Respondents assert the Complaint is frivolous because Complainant “targeted” these individuals to “strike back at the Board for not appointing him to the Board.” Respondents submit that Complainant “filed the amended ethics complaint for the improper purpose of attempting to dominate the Board to achieve his political will. He merely opposes the decisions made by the Board and has concocted an ethics complaint to harass and needlessly increase District cost to counter his baseless claim.”

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

In response to the Motion to Dismiss and allegation of frivolous filing, Complainant argues that, contrary to Respondents’ claims, “Nothing in [his] actions, beliefs, or this complaint remotely show any bias toward a woman, women of color, or any other minority group whatsoever.” Complainant notes the Complaint is not frivolous “from the reasons outlined and evidenced in the complaint itself.” Complainant reaffirms Respondent Watson’s “apprehension to re-open schools without in school learning is an example of putting her own cherry-picking opinions and interpretations of science that aligned with what was best for her own views and NOT what was in the best interest of the Community or the children.”

Complainant reasserts that Respondent Van Aken “was employed by an Educational Technology Company[,] Clever Inc[.] who provided single sign on services for the district, which benefitted her company and power and reputation with her company when schools went

remote.” Complainant believes it is noteworthy that Respondents Watson and Van Aken were the only two Board members to vote to “stop in person learning.” Complainant maintains Respondent Van Aken “could have had a conflict of interest since her employer benefits from remote learning”

Complainant argues that Respondent Watson’s comments about Complainant “stalking” Respondent Van Aken, at the Board meeting on October 27, 2021, were “out of order” Complainant further argues Respondent Watson’s comments were “Defamatory, not substantiated by facts, and [were] falsely accusatory since nothing [he] did [was] anything like harassment.”

Complainant reasserts that his “claim is NOT baseless.” Complainant asserts that he has provided numerous exhibits to support his allegations; he has the right to freedom of speech at Board meetings and should not be silenced or limited; the “entire appointment process was not held in accordance with [p]olicy or [g]uidance . . . has tainted and compromised the board . . .”; the Board refused to “disclose any reasons for Dr. Gentile[’s] non renewal; the Board “does not have the right to administer a survey”; and the “only purpose of this Ethics complaint was to identify” the violations of the Act.

D. *Public Comments Offered at the Commission’s Meeting on July 26, 2022*

At the Commission’s meeting on July 26, 2022, members of the public appeared by telephone and offered public comment regarding the above-captioned matter. More detailed information regarding the substance of those public comments can be found in the [minutes](#) from the Commission’s meeting on July 26, 2022.

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 Respondents violated *N.J.S.A. 18A:12-24.1(a)* (in Counts 1-6); *N.J.S.A. 18A:12-24.1(b)* (in Count 1 and Counts 3-6); *N.J.S.A. 18A:12-24.1(c)* (in Count 1 and Counts 3-6); *N.J.S.A. 18A:12-24.1(d)* (in Count 4 and Count 6); *N.J.S.A. 18A:12-24.1(e)* (in Counts 1-6); *N.J.S.A. 18A:12-24.1(f)* (in Counts 3-6); *N.J.S.A. 18A:12-24.1(g)* (in Counts 1-2); *N.J.S.A. 18A:12-24.1(h)* (in Count 1 and Count 4); *N.J.S.A. 18A:12-24.1(i)* (in Count 1 and Counts 3-5); and/or *N.J.S.A. 18A:12-24.1(j)* (in Count 2 and Count 4). The Commission notes that, despite the offering of public comment at its meeting on July 26, 2022, the Commission’s review of this matter was limited solely to the parties’ written submissions.

B. *Jurisdiction of the Commission*

In reviewing the pleadings 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 the named Respondents, whether individually or collectively, violated Robert's Rules of Order; violated Board policies and/or regulations; violated Board bylaws; committed "harassment" as defined in the criminal code; filed a "false police report" in violation of the criminal code; and/or engaged in speech (written or verbal) that was defamatory in nature (and constituted libel and/or slander), the Commission advises that such determinations fall well beyond the scope, authority, and jurisdiction of the Commission. Although Complainant may be able to pursue a cause of action(s) in the appropriate tribunal, the Commission is not the appropriate entity to adjudicate those issues. Accordingly, those claims are *dismissed*.

The Commission also notes that, even if a violation of the Act was established, it would not have the authority to "suspend" the vote of a sitting Board member; to postpone the process by which the Board fills an existing vacancy; to remove Board counsel; to "set aside" the current Superintendent contract; to "extend" the employment contract of any District employee; and/or to order the Board to conduct a new Superintendent search. Instead, the Commission's authority is limited to recommending discipline/a sanction for violations of the Act, which ranges from reprimand to removal. Although the requested forms of relief could be sought, and possibly obtained, in other tribunals, the Commission does not have the authority to recommend same.

C. *Alleged Code Violations*

Complainant submits that, based on the conduct more fully detailed above, Respondents violated *N.J.S.A.* 18A:12-24.1(a) (in Counts 1-6); *N.J.S.A.* 18A:12-24.1(b) (in Count 1 and Counts 3-6); *N.J.S.A.* 18A:12-24.1(c) (in Count 1 and Counts 3-6); *N.J.S.A.* 18A:12-24.1(d) (in Count 4 and Count 6); *N.J.S.A.* 18A:12-24.1(e) (in Counts 1-6); *N.J.S.A.* 18A:12-24.1(f) (in Counts 3-6); *N.J.S.A.* 18A:12-24.1(g) (in Counts 1-2); *N.J.S.A.* 18A:12-24.1(h) (in Count 1 and Count 4); *N.J.S.A.* 18A:12-24.1(i) (in Count 1 and Counts 3-5); and *N.J.S.A.* 18A:12-24.1(j) (in Count 2 and Count 4), and these provisions of the Code provide:

- a. I will uphold and enforce all laws, rules and regulations of the State Board of Education, and court orders pertaining to schools. Desired changes shall be brought about only through legal and ethical procedures.
- b. I will make decisions in terms of the educational welfare of children and will seek to develop and maintain public schools that meet the individual needs of all children regardless of their ability, race, creed, sex, or social standing.
- c. I will confine my board action to policy making, planning, and appraisal, and I will help to frame policies and plans only after the board has consulted those who will be affected by them.

- d. I will carry out my responsibility, not to administer the schools, but, together with my fellow board members, to see that they are well run.
- e. I will recognize that authority rests with the board of education and will make no personal promises nor take any private action that may compromise the board.
- f. I will refuse to surrender my independent judgment to special interest or partisan political groups or to use the schools for personal gain or for the gain of friends.
- g. I will hold confidential all matters pertaining to the schools which, if disclosed, would needlessly injure individuals or the schools. In all other matters, I will provide accurate information and, in concert with my fellow board members, interpret to the staff the aspirations of the community for its school.
- h. I will vote to appoint the best qualified personnel available after consideration of the recommendation of the chief administrative officer.
- i. I will support and protect school personnel in proper performance of their duties.
- 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(a); *N.J.S.A.* 18A:12-24.1(b); *N.J.S.A.* 18A:12-24.1(c); *N.J.S.A.* 18A:12-24.1(d); *N.J.S.A.* 18A:12-24.1(e); *N.J.S.A.* 18A:12-24.1(f); *N.J.S.A.* 18A:12-24.1(g); *N.J.S.A.* 18A:12-24.1(h); *N.J.S.A.* 18A:12-24.1(i); and *N.J.S.A.* 18A:12-24.1(j) need to be supported by certain factual evidence, namely:

1. Factual evidence of a violation of *N.J.S.A.* 18A:12-24.1(a) shall include a copy of a final decision from any court of law or administrative agency of this State demonstrating that Respondents failed to enforce all laws, rules and regulations of the State Board of Education, and/or court orders pertaining to schools or that Respondents brought about changes through illegal or unethical procedures.
2. Factual evidence of a violation of *N.J.S.A.* 18A:12-24.1(b) shall include evidence that Respondents willfully made a decision contrary to the educational welfare of children, or evidence that Respondents 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 Respondents took board action to effectuate policies and plans without consulting those affected by such policies and plans, or took action that was unrelated to Respondents' 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.

4. Factual evidence of a violation of *N.J.S.A.* 18A:12-24.1(d) shall include, but not be limited to, evidence that Respondents gave a direct order to school personnel or became directly involved in activities or functions that are the responsibility of school personnel or the day-to-day administration of the school district or charter school.
5. Factual evidence of a violation of *N.J.S.A.* 18A:12-24.1(e) shall include evidence that Respondents made personal promises or took action beyond the scope of their 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 Respondents 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 Respondents used the schools in order to acquire some benefit for themselves, a member of their respective immediate families, 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 Respondents 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 Respondents 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 Respondents and evidence that establishes that the inaccuracy was other than reasonable mistake or personal opinion or was not attributable to developing circumstances.
8. Factual evidence of a violation of *N.J.S.A.* 18A:12-24.1(h) shall include evidence that Respondents acted on a personnel matter without a recommendation of the chief administrative officer.
9. Factual evidence of a violation of *N.J.S.A.* 18A:12-24.1(i) shall include evidence that Respondents took deliberate action which resulted in undermining, opposing, compromising or harming school personnel in the proper performance of their duties.
10. Factual evidence of a violation of *N.J.S.A.* 18A:12-24.1(j) shall include evidence that Respondents 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.

Following a thorough and comprehensive review of the Complaint, and the Exhibits submitted by Complainant in support thereof, the Commission finds that even if the facts as contended are proven true by sufficient credible evidence, they would not support a finding that Respondents violated *N.J.S.A.* 18A:12-24.1(a) (in Counts 1-6); *N.J.S.A.* 18A:12-24.1(b) (in Count 1 and Counts 3-6); *N.J.S.A.* 18A:12-24.1(c) (in Count 1 and Counts 3-6); *N.J.S.A.* 18A:12-24.1(d) (in Count 4 and Count 6); *N.J.S.A.* 18A:12-24.1(e) (in Counts 1-6); *N.J.S.A.* 18A:12-24.1(f) (in Counts 3-6); *N.J.S.A.* 18A:12-24.1(g) (in Counts 1-2); *N.J.S.A.* 18A:12-24.1(h) (in

Count 1 and Count 4); *N.J.S.A.* 18A:12-24.1(i) (in Count 1 and Counts 3-5); and/or *N.J.S.A.* 18A:12-24.1(j) (in Count 2 and Count 4).

The impetus for the filing of the above-captioned matter appears to be Complainant's displeasure with the method/process by which the Board filled a vacancy on the Board (Count 1, Count 3, and Count 5); the recommendation of/opinion from a member of the Board that a restraining order should be filed against Complainant (Count 2); the circumstances under which the employment contract for the new Superintendent was approved (Count 4); and the purported "inconsistency" in messaging (from the Superintendent and separately from Respondents) regarding a brief period of school closure in January 2022. However, the Complaint and its Exhibits, although rife with allegations, is wanting in evidentiary support in that there is no final decision from any court of law or administrative agency of this State demonstrating that Respondents (either individually or collectively) failed to enforce all laws, rules and regulations of the State Board of Education, and/or court orders pertaining to schools, or that they (individually or collectively) brought about changes through illegal or unethical procedures (*N.J.S.A.* 18A:12-24.1(a)); no evidence that Respondents willfully made a decision contrary to the educational welfare of children, or evidence that Respondents took deliberate action to obstruct the programs and policies designed to meet the individual needs of the District's students (*N.J.S.A.* 18A:12-24.1(b)); no evidence that Respondents took board action to effectuate policies and plans without consulting those affected by such policies and plans, or took action that was unrelated to their duties as Board members (*N.J.S.A.* 18A:12-24.1(c)); no evidence that Respondents gave a direct order to school personnel or became directly involved in activities or functions that are the responsibility of school personnel (*N.J.S.A.* 18A:12-24.1(d)); and no evidence that Respondents made personal promises or took action beyond the scope of their duties such that had the potential to compromise the Board (*N.J.S.A.* 18A:12-24.1(e)).

Moreover, there is no evidence that Respondents took action on behalf of, or at the request of, a special interest group or persons organized and voluntarily united in opinion, or used the schools in order to acquire some benefit for themselves, a member of their respective immediate families, or a friend (*N.J.S.A.* 18A:12-24.1(f)); no evidence that Respondents 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, or provided inaccurate information that was *other than* reasonable mistake or personal opinion or was not attributable to developing circumstances (*N.J.S.A.* 18A:12-24.1(g)); no evidence that Respondents acted on a personnel matter without a recommendation of the chief administrative officer (*N.J.S.A.* 18A:12-24.1(h)); no evidence that Respondents took 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)); and no evidence that Respondents acted on or attempted to resolve a complaint, or conducted an investigation or inquiry related to a complaint (*N.J.S.A.* 18A:12-24.1(j)).

Filling a vacancy is, without question, included within the authority of the Board and, therefore, falls within the scope of a Board member's duties and responsibilities. However, the failure of *the Board* to wholly abide by the guidelines and procedures (or bylaws) - to the extent they may exist - regarding the filling of a vacancy is not, based on the Complaint as pled, evidence of unethical conduct by an individual Board member(s). Similarly, the selection and appointment of a Superintendent is one of the most critical decisions that the Board, and its

individual members is tasked with completing. As such, any action taken by Respondents, either individually or collectively, regarding the filling of the vacancy and/or the selection and appointment of the Superintendent was directly related to their duties and responsibilities as Board members. Although school officials can still violate the Code when fulfilling either of these duties, there is an absence of evidence in this matter sufficient to substantiate a violation.

Furthermore, although the messaging from Respondents about the reason(s) for the school closure may have been inaccurate or differed from that offered by the Superintendent, without evidence that the inaccuracy was purposeful or other than reasonable mistake, it too is not actionable (based on the facts as pled). Finally, while Complainant clearly takes umbrage with the suggestion that the Board, and/or its individual members should file a restraining order against him, that suggestion or opinion is also not, without more, unethical.

Accordingly, the Commission finds that the alleged violations of *N.J.S.A.* 18A:12-24.1(a) (in Counts 1-6); *N.J.S.A.* 18A:12-24.1(b) (in Count 1 and Counts 3-6); *N.J.S.A.* 18A:12-24.1(c) (in Count 1 and Counts 3-6); *N.J.S.A.* 18A:12-24.1(d) (in Count 4 and Count 6); *N.J.S.A.* 18A:12-24.1(e) (in Counts 1-6); *N.J.S.A.* 18A:12-24.1(f) (in Counts 3-6); *N.J.S.A.* 18A:12-24.1(g) (in Counts 1-2); *N.J.S.A.* 18A:12-24.1(h) (in Count 1 and Count 4); *N.J.S.A.* 18A:12-24.1(i) (in Count 1 and Counts 3-5); and *N.J.S.A.* 18A:12-24.1(j) (in Count 2 and Count 4) should be dismissed.

IV. Request for Sanctions

At its meeting on July 26, 2022, the Commission considered Respondents' request that the Commission find the Complaint frivolous and impose sanctions pursuant to *N.J.S.A.* 18A:12-29(e). Despite Respondents' 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 August 23, 2022, the Commission voted to find the Complaint 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 Respondents violated *N.J.S.A.* 18A:12-24.1(a) (in Counts 1-6); *N.J.S.A.* 18A:12-24.1(b) (in Count 1 and Counts 3-6); *N.J.S.A.* 18A:12-24.1(c) (in Count 1 and Counts 3-6); *N.J.S.A.* 18A:12-24.1(d) (in Count 4 and Count 6); *N.J.S.A.* 18A:12-24.1(e) (in Counts 1-6); *N.J.S.A.* 18A:12-24.1(f) (in Counts 3-6); *N.J.S.A.* 18A:12-24.1(g) (in Counts 1-2); *N.J.S.A.* 18A:12-24.1(h) (in Count 1 and Count 4); *N.J.S.A.* 18A:12-24.1(i) (in Count 1 and Counts 3-5); and/or *N.J.S.A.* 18A:12-24.1(j) (in Count 2 and Count 4). The Commission also voted to find that the Complaint is not frivolous and to deny Respondents' request for sanctions.

Pursuant to *N.J.S.A.* 18A:12-29(b), the Commission hereby notifies Complainant and Respondents 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: August 23, 2022

**Resolution Adopting Decision
in Connection with C42-22**

Whereas, at its meeting on July 26, 2022, 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 July 26, 2022, the Commission discussed granting the Motion to Dismiss in its entirety for failure to plead sufficient credible facts to support the allegations that Respondents violated *N.J.S.A.* 18A:12-24.1(a) (in Counts 1-6); *N.J.S.A.* 18A:12-24.1(b) (in Count 1 and Counts 3-6); *N.J.S.A.* 18A:12-24.1(c) (in Count 1 and Counts 3-6); *N.J.S.A.* 18A:12-24.1(d) (in Count 4 and Count 6); *N.J.S.A.* 18A:12-24.1(e) (in Counts 1-6); *N.J.S.A.* 18A:12-24.1(f) (in Counts 3-6); *N.J.S.A.* 18A:12-24.1(g) (in Counts 1-2); *N.J.S.A.* 18A:12-24.1(h) (in Count 1 and Count 4); *N.J.S.A.* 18A:12-24.1(i) (in Count 1 and Counts 3-5); and/or *N.J.S.A.* 18A:12-24.1(j) (in Count 2 and Count 4); and

Whereas, at its meeting on July 26, 2022, the Commission discussed finding the Complaint not frivolous and denying the request for sanctions; and

Whereas, at its meeting on August 23, 2022, the Commission reviewed and voted to approve the within decision as accurately memorializing its actions/findings from its meeting on July 26, 2022; 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 August 23, 2022.

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