
EILEEN ALBANESE ET AL.

v.

**CATHERINE KAZAN,
WAYNE TOWNSHIP BOARD
OF EDUCATION,
PASSAIC COUNTY**

**BEFORE THE SCHOOL
ETHICS COMMISSION**

DOCKET NO.: C33-16

**DECISION ON
MOTION TO DISMISS**

I. BRIEF BACKGROUND

This matter arises from a Complaint filed on August 31, 2016, by Eileen Albanese, Donald Pavlak, Robert Ceberio, Alan R. Mordkoff, Mitchell Badiner, and Michael L. Bubba (Complainants), members of the Wayne Township Board of Education (Board), alleging that Catherine Kazan (Respondent), another Board member, violated the School Ethics Act (Act), N.J.S.A. 18A:12-21 et seq. By correspondence dated September 1, 2016, Complainants were notified that their Complaint was deficient and required amendment. On September 26, 2016, Complainants cured all defects and filed an Amended Complaint (Complaint) that was deemed compliant with the requirements detailed in N.J.A.C. 6A:38-6.7. The Complaint alleges that Respondent violated N.J.S.A. 18A:12-24(a) [Counts 1-3, and Counts 5-10], N.J.S.A. 18A:12-24(b) [Count 7], N.J.S.A. 18A:12-24(c) [Counts 1-3, and Counts 5-10], N.J.S.A. 18A:12-24(g) [Counts 1-3, and Counts 5-10], N.J.S.A. 18A:12-24.1(a) [Counts 1-10], N.J.S.A. 18A:12-24.1(b) [Counts 1-3, and Counts 5-9], N.J.S.A. 18A:12-24.1(c) [Counts 1-2 and Counts 4-8], N.J.S.A. 18A:12-24.1(d) [Counts 4-8], N.J.S.A. 18A:12-24.1(e) [Counts 1-10], N.J.S.A. 18A:12-24.1(f) [Counts 1-8 and Count 10], N.J.S.A. 18A:12-24.1(g) [Counts 4-10], and N.J.S.A. 18A:12-24.1(i) [Counts 2-8, and Count 10].

On October 6, 2016, the Complaint was sent to Respondent, notifying her that charges were filed against her with the School Ethics Commission (Commission), and advising that she had twenty (20) days to respond to the Complaint. On October 21, 2016, Respondent filed a Motion to Dismiss in Lieu of Answer (Motion to Dismiss). After the within matter was placed in abeyance because of the pendency of a related matter, Complainants filed a Response to the Motion to Dismiss. In addition, both parties filed additional submissions as requested by the Commission.

The parties were notified by correspondence dated September 22, 2017, that this matter would be considered by the Commission at a special meeting. At its meeting on October 17, 2017, the Commission discussed this matter, and at its meeting on October 31, 2017, it voted to grant the Motion to Dismiss for the reasons more fully discussed below.

II. SUMMARY OF THE PLEADINGS / PROCEDURAL HISTORY

A. Petition of Appeal

On June 17, 2016, the Board filed a Petition of Appeal with the Commissioner of Education (Commissioner) against Respondent seeking her removal and disqualification as a Board member

pursuant to N.J.S.A. 18A:12-2.¹ The facts and issues which formed the basis for the Petition of Appeal were the same as those in the ethics Complaint at issue here.

The matter was transmitted to the Office of Administrative Law (OAL), where it was filed on July 11, 2016, for plenary hearing as a contested case.

B. Ethics Complaint

The Complaint asserts that on or about November 3, 2015, a public question was posed to the residents of Wayne Township asking whether they were in favor of implementing full day kindergarten in the Wayne Township School District (District). The answer to the question was “no.” Nonetheless, on or about December 3, 2015, Respondent allegedly “filed lawsuits” against both the Board, of which she was a sitting member, and Wayne Township to invalidate the results of the public question. The lawsuit was entitled, “In Re Contest of the November 3, 2015, Public Question as to whether full day kindergarten should be offered in Wayne Township Public Schools.” After filing the lawsuit, and from January through March 2016, Respondent “continuously voted on and moved resolutions in support of funding full day kindergarten at all costs, and against the recommendation of the administration. Without knowledge of the lawsuit filed by Respondent, the Board agreed, at its Board meeting on March 17, 2016, to place a second question on the ballot regarding full day kindergarten. On June 8, 2016, the Board asserts it learned, for the first time, about the “lawsuits” Respondent filed against the Board and Wayne Township. On June 16, 2016, a recorded roll call vote of the majority of Board members voted to file an ethics complaint alleging the following:

Count 1: By contributing money to a GoFundMe page in November 2015 in support of full day kindergarten, visiting a fundraising booth on “Wayne Day” (which was on June 12, 2016) to collect donations in support of full day kindergarten, and by being photographed with members of a Facebook group named “Wayne Says OK to Full Day K,” Respondent violated N.J.S.A. 18A:12-24(a), (c), and (g), as well as N.J.S.A. 18A:12-24.1(a), (b), (c), (e), and (f), “because it was proof that she surrendered her independent judgment to special interest groups and had a conflict of interest, in violation of the regulations.”

Count 2: By being listed as a Plaintiff in a complaint filed in Passaic County Superior Court against the Board, a matter/litigation which sought to invalidate the results of the public’s vote on the matter of full day kindergarten, Respondent violated N.J.S.A. 18A:12-24(a), (c), and (g), as well as N.J.S.A. 18A:12-24.1(a), (b), (c), (e), (f), and (i), “because, generally, school board members are prohibited from filing lawsuits against the Board they serve.”

Count 3: Although Respondent filed a “lawsuit” on December 3, 2015, the Board was not served until June 8, 2016, which was one hundred eighty-eight (188) days after it was filed. In addition, during this time, Respondent never disclosed to the Board that she had filed a lawsuit. Based on these facts, Complainants allege that Respondent violated N.J.S.A. 18A:12-24(a), (c), and (g), as well as N.J.S.A. 18A:12-24.1(a), (b), (e), (f), and (i), “because she directed her attorney to

¹ N.J.S.A. 18A:12-2 provides, in relevant part, “No member of any board of education shall be interested directly or indirectly in any contract with or claim against the board...”

file the lawsuit on her behalf against the Board and she was aware of its existence and the fact that the District and the Board were not notified of the filing of the lawsuit... Additionally, it allowed [Respondent] to continue to vote on matters regarding the budget without the Board or public being aware of the conflict.”

Count 4: At the Board’s reorganization meeting on January 7, 2016, Respondent made “misinformed” statements concerning the role of the Board, and also made disparaging comments about the administration. By making such statements and comments, Complainants contend Respondent violated N.J.S.A. 18A:12-24.1(a), (c), (d), (e), (f), (g), and (i), because “as a Board member, [Respondent] is prohibited from administering [the schools] and making negative public statements against [the] [a]dministration and/or that will compromise the Board.”

Count 5: At the Board’s reorganization meeting on January 7, 2016, Respondent voted in favor of full day kindergarten despite a plan to fully discuss proposals for full day kindergarten at a future meeting, and without first knowing whether the District’s budget could sustain it. Based on these facts, Complainants contend that Respondent violated N.J.S.A. 18A:12-24(a), (c), and (g), as well as N.J.S.A. 18A:12-24.1(a), (b), (c), (d), (e), (f), (g), and (i), “because her vote was not made in terms of the educational welfare of children, but rather in order to advance her personal agenda of bringing [full day kindergarten] to [the District] and in support of the lawsuit she brought without disclosing [it] to the Board.”

Count 6: Because of the “lawsuit” Respondent filed against the Board, and because the administration expressed concern with the District’s ability to finance full day kindergarten, Respondent’s votes and continued discussions in favor of full day kindergarten violated N.J.S.A. 18A:12-24(a), (c), and (g), as well as N.J.S.A. 18A:12-24.1(a), (b), (c), (d), (e), (f), (g), and (i), because “she placed her constituency and platform before the educational needs of the children in the District and attempted to administrate by ignoring advice of educational leaders in the District, further compromising the Board.”

Count 7: By publicly critiquing the Board’s administrators at a Board meeting, Respondent violated N.J.S.A. 18A:12-24(a), (b), (c), and (g), as well as N.J.S.A. 18A:12-24.1(a), (b), (c), (d), (e), (f), (g), and (i), because “she was prohibited from making public[ly] disparaging statements of Administration and her comments were motivated by her personal agenda and lawsuit concerning [full day kindergarten].”

Count 8: By not voting in favor of the preliminary budget at the March 14, 2016, Board meeting, ostensibly because full day kindergarten was not included, Respondent violated N.J.S.A. 18A:12-24(a), (c), and (g), as well as N.J.S.A. 18A:12-24.1(a), (b), (c), (d), (e), (f), (g), and (i), because “her actions in support of her personal agenda and lawsuit put the District in financial peril.”

Count 9: When Respondent sought an Advisory Opinion from the Commission, purportedly in “retaliation” for the filing of the within matter by Complainants, she failed to notify the Board and/or the subject of her request (a Complainant in this matter). In this way, Complainants assert that Respondent violated N.J.A.C. 6A:28-1.7 and N.J.S.A. 18A:12-24(a), (c),

and (g), as well as N.J.S.A. 18A:12-24.1(a), (b), (e), and (g), because Respondent’s “failure to notify the Board or Ms. Albanese deprived both parties of due process.”

Count 10: Respondent made “negative” statements, through her attorney, that violated N.J.S.A. 18A:12-24(a), (c), and (g), as well as N.J.S.A. 18A:12-24.1(a), (e), (f), (g), and (i), because Respondent’s “actions compromised the confidentiality of the Board’s deliberative process and she acted in furtherance of her own personal agenda rather than the needs of the District.”

C. Motion to Dismiss

On October 21, 2016, Respondent filed a Motion to Dismiss, arguing that Complainants misrepresented to the Court that Respondent filed the action against the Board, instead noting that the Board was not named as a Defendant and by statute, the responding party or Defendant must be the Township Clerk who certified the election results. In addition, Respondent argues the other allegations ignore her First Amendment constitutional rights to express her political positions and to vote without the prospect of facing discipline by a State body. Respondent also cites legal precedent to support that a Board member may vote contrary to recommendations made by experts or superintendents.

D. Matter Placed in Abeyance by the Commission

At its meeting on October 24, 2016, pursuant to N.J.S.A. 18A:12-32, the SEC voted to place this matter in abeyance in light of pending litigation at the Office of Administrative Law. At the time the Commission voted to place this matter in abeyance, Complainants had not yet filed a response to the Motion to Dismiss.

E. Initial Decision Issued by Administrative Law Judge Cookson

On March 16, 2017, Administrative Law Judge (ALJ) Cookson issued her Initial Decision on the pending Petition seeking Respondent’s disqualification. In her Initial Decision, ALJ Cookson noted that the following material facts, among others, were undisputed:

1. In 2013, Respondent ran on a political platform pledging to institute a Full Day Kindergarten Program within the District.
2. Respondent has been a sitting member of the [Board] since January 2, 2014.
- ...
5. On or about December 3, 2015, fifteen citizens, including [R]espondent filed suit naming the Township Clerk...as the official responsible for certifying the election results of the township...and sought to have the results of the public question set aside due to alleged illegal electioneering on the part of poll workers.
6. On January 7, 2016, at the Board Organizational Meeting, six of the eight Board members voted to approve a motion to implement full-day kindergarten

in all nine elementary schools for the 2016/2017 school year within the 2016-/2017 budget.

...

9. After hearing administration's concerns, at the March 14th meeting, the Board voted seven to two to rescind the earlier vote to implement full-day kindergarten within the then-current proposed school budget.

...

11. On or about April 16, 2016, [counsel for Respondent] filed an Order to Show Cause...identical to the December 2015 Petition, seeking redress to invalidate the November 2015 election results. ... The Order to Show Cause was filed because of the vote of the Board rescinding [the vote to implement full day kindergarten].

...

13. At no time relevant to these events did respondent advise the Board that she had been a signatory on the original Complaint to rescind the prior full-day kindergarten ballot question due to improper electioneering.

14. At a June 16, 2016 [Board meeting], the Board passed a resolution directing counsel to file a complaint with the School Ethics Commission and a Petition with the [Commissioner] to disqualify [R]espondent from membership on the Board. ...

Board of Education of the Township of Wayne, Passaic County v. Catherine Kazan, OAL Dkt. No. EDU 10129-16, Agency Dkt. No. 167-6/16 (March 16, 2017) (Initial Decision) at 3-6.

ALJ Cookson also added that the following facts had been established as a matter of documentation and public record:

1. The [Board] was not a party to nor named in the complaint filed to set aside the results of the public ballot question.

2. Neither [R]espondent nor her counsel have any control over the Superior Court's Clerk Office or automated case management system.

Initial Decision at 6. Based on the undisputed material facts as set forth above, ALJ Cookson found:

...I am also shocked at the suggestion that a citizen who has been elected to a Board is expected to leave his or her opinions at the door notwithstanding he or she campaigned on specific concerns and issues, and notwithstanding the retention of free speech rights under the First Amendment. Yet, no member who is part of a minority of persons holding a certain viewpoint...is stifled from expressing those views by any ethical code so long as those views are expressed in an appropriate manner...[and not for] an inappropriate reason....

In addition to finding that there was no basis for disqualification under N.J.S.A. 18A:12-2, the ALJ also commented on the pending ethics charges. She noted, ...No other Board member who voted similarly to Respondent has been subjected to charges of unethical behavior before the [Commission]...For example, the allegations of the Amended School Ethics Complaint would have findings of violations entered for the acts of debate and vote as a Board member during a Board meeting – Violations Four, Five, Six, Seven and Eight. Other allegations split hairs or puff up repetitive charges, including violations Two, Three, and Six.

Violation One alleges unethical conduct on the part of respondent because she privately contributed money for a campaign to support full day kindergarten; she visited a booth in support of full-day kindergarten at Wayne Day; and she was at a public art studio for a fundraising event for full-day kindergarten and was photographed with a pro-full-day kindergarten group of citizens. None of those allegations is alleged to have occurred as a result of respondent representing herself as a Board member as opposed to acting as a private citizen. Violation Ten cites hearsay contained in newspaper reports of the dispute between the parties...and statements of her attorney as evidence of negative comments attempting to smear other members of the Board. Violation Nine is an allegation that she failed to properly serve her pro se request for an advisory opinion from the SEC (after this dispute had already ripened).

Respondent retained her independent judgment and nothing to the contrary presented by the Board indicates that she abdicated it for her gain or the gain of others. The only change respondent was seeking to make was to establish full-day kindergarten in Wayne and she tried to do so by exercising her right to lobby her fellow members through debate and discussion.

I could reach the conclusion that respondent should have erred on the side of caution and not become a signatory plaintiff to the Complaint, but in no other manner or fashion did she violate the ethical restraints upon Board members. ... I CONCLUDE as a matter of law and undisputed facts that petitioner has failed to support these allegations. ...

Initial Decision at 10-13. As a result of her factual and legal findings, ALJ Cookson granted Respondent's Motion for Summary Decision, and dismissed the Board's Petition of Appeal.

F. Commissioner of Education Decision

On April 28, 2017, the Commissioner issued a final decision in connection with the Board's Petition of Appeal, and concurred with the ALJ that Respondent did not have a conflict of interest pursuant to N.J.S.A. 18A:12-2, that precludes her from serving on the Board. Accordingly, Commissioner adopted the recommended decision of the ALJ "for the reasons expressed therein," and dismissed the Petition of Appeal. Neither the Board nor Respondent appealed this determination to the Superior Court, Appellate Division.

G. Complainants' Response to Motion to Dismiss

At its meeting on June 27, 2017, the Commission voted to take this matter out of abeyance, and to provide Complainants, pursuant to their request, with time to file a response to the Motion to Dismiss. As directed, Complainants filed their response to the Motion to Dismiss on August 7, 2017. In their response, Complainants assert that Respondent, through her public and private comments, her organizing efforts, and her actions and deeds sought to undermine the policy of the majority of the Board and that of the Superintendent. Complainants contend, that it is irrelevant as to whether the lawsuit in question was against the Board or the Town Clerk. Complainants further argue that by refusing to adhere to the decision of the Board and the public, Respondent clearly made personal promises to the kindergarten supporters and made comments on a closed Facebook page that compromised the Board and ignored the wishes of the people who voted against instituting full day kindergarten. Regarding Respondent's right to freedom of speech, Complainants assert they are not questioning Respondent's First Amendment right; however, they are focusing on a board member's behavior and what is deemed acceptable within the context of those duties. Complainants argue that Respondent refused to accept the decision of the Board and the public with regard to full day kindergarten. According to Complainants, the Superintendent and staff made it clear that the District could not financially support full day kindergarten without making wholesale cuts to other educational programs, and Respondent disregarded that decision and continued to create a hostile work environment for the Superintendent and staff by continuing to take action in support of implementing full day kindergarten.

H. Additional Submissions

Although the Commission initially advised the parties that it would consider the Complaint, the Motion to Dismiss, and Complainant's response to the Motion to Dismiss at its meeting on August 22, 2017, the Commission subsequently voted to table the matter, and to seek additional information and written submissions from the parties. Specifically, the Commission requested that the parties address the impact that the ALJ's Initial Decision and the Commissioner's Decision had on the matter currently pending before the Commission and whether those decisions resolve any factual and/or legal issues.

On September 5, 2017, Respondent filed an additional written submission asserting that the Complaint was based on the same sets of facts as the disqualification petition, and since the ALJ had already ruled that Respondent did not file a complaint against the Board, and the Commissioner adopted the ALJ's legal and factual findings, the issue cannot be re-litigated here. As a result, Respondent renewed her request for dismissal of the Complaint.

On October 10, 2017, after receiving an extension, Complainants filed a submission making the following points: the filing of the lawsuit was nothing more than a political maneuver by Respondent and her followers to keep the issue of full day kindergarten alive even though the public voted to defeat it; Respondent and her committee created an illusion of election interference; Respondent never disclosed to the Board the lawsuit she was filing, and never admitted to the filing; no matter what has been previously decided, "if it looks like a lawsuit," it is a lawsuit; at the reorganization meeting on January 7, 2016, Respondent voted to have full-day kindergarten implemented in the District even though the public had already defeated the issue; and this case is

about more than the lawsuit Respondent filed against the Board – “It is the about the actions by [Respondent] ... to subvert the majority ruling of the board and that of the superintendent.”

Complainants conclude by noting, “...we are certain [Respondent] violated N.J.S.A. 18A:12-24.1(b) in that she willfully made a decision contrary to the educational welfare of children, or evidence that the respondent(s) 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.” ... “We are certain that there is evidence of a violation of N.J.S.A. 18A:12-24.1(c) because [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 (1) develop the general rules and principles that guide the management of the school district or charter school; (2) formulate the programs or methods to effectuate the goals of the school district or charter school; or (3) ascertain the value or liability of a policy.”

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 (Complainants) and determine whether the allegation(s), if true, could establish a violation 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, in accordance with N.J.A.C. 6A:28-8.1 et seq. Thus, the question before the Commission is whether Complainants have alleged facts which, if true, could support a finding that Respondent violated N.J.S.A. 18A:12-24(a) [Counts 1-3, and Counts 5-10], N.J.S.A. 18A:12-24(b) [Count 7], N.J.S.A. 18A:12-24(c) [Counts 1-3, and Counts 5-10], N.J.S.A. 18A:12-24(g) [Counts 1-3, and Counts 5-10], N.J.S.A. 18A:12-24.1(a) [Counts 1-10], N.J.S.A. 18A:12-24.1(b) [Counts 1-3, and Counts 5-9], N.J.S.A. 18A:12-24.1(c) [Counts 1-2 and Counts 4-8], N.J.S.A. 18A:12-24.1(d) [Counts 4-8], N.J.S.A. 18A:12-24.1(e) [Counts 1-10], N.J.S.A. 18A:12-24.1(f) [Counts 1-8 and Count 10], N.J.S.A. 18A:12-24.1(g) [Counts 4-10], and N.J.S.A. 18A:12-24.1(i) [Counts 2-8, and Count 10].

B. Allegations of Prohibited Acts

Complainants contend, in various counts of their Complaint, that Respondent violated N.J.S.A. 18A:12-24(a), N.J.S.A. 18A:12-24(b), N.J.S.A. 18A:12-24(c), and N.J.S.A. 18A:12-24(g), and those provisions state, in pertinent part:

- a. No school official or member of his immediate family shall have an interest in a business organization or engage in any business, transaction, or professional activity, which is in substantial conflict with the proper discharge of his duties in the public interest;
- 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;

g. No school official or business organization in which he has an interest shall represent any person or party other than the school board or school district in connection with any cause, proceeding, application or other matter pending before the school district in which he serves or in any proceeding involving the school district in which he serves or, for officers or employees of the New Jersey School Boards Association, any school district. This provision shall not be deemed to prohibit representation within the context of official labor union or similar representational responsibilities;

In order to credit the allegation of a violation of N.J.S.A. 18A:12-24(a), the Commission must find factual evidence that Respondent, or members of her immediate family, had an interest in a business organization, or engaged in any business, transaction, or professional activity which is in substantial conflict with the proper discharge of her duties in the public interest.

In order to credit the allegation of a violation of N.J.S.A. 18A:12-24(b), the Commission must find factual evidence that Respondent used or attempted to use her official position to secure unwarranted privileges, advantages or employment for herself, a member of her immediate family, or an “other.”

In order to credit the allegation of a violation of N.J.S.A. 18A:12-24(c), the Commission must find factual evidence that Respondent acted in her official capacity in a matter where she, or a member of her immediate family, or a business organization in which she has an interest, has a direct or indirect financial involvement that might reasonably be expected to impair her objectivity or independence of judgment; or find evidence that Respondent acted in her official capacity in a matter where she, or a member of her immediate family, has a personal involvement that creates some benefit to Respondent or to members of her immediate family.

In order to credit the allegation of a violation of N.J.S.A. 18A:12-24(g), the Commission must find factual evidence that Respondent, or a business organization in which she has an interest, represents any person other than the school board or school district in connection with any cause, proceeding, application or other matter pending before the school district in which she serves, or in any proceeding involving the school district in which she serves.

1. Count 1 [Alleged Violations of N.J.S.A. 18A:12-24(a), (c), and (g)]

Complainants contend that by contributing money to a GoFundMe page in November 2015 in support of full day kindergarten, visiting a fundraising booth on “Wayne Day” (which was on June 12, 2016) to collect donations in support of full day kindergarten, and by being photographed

with members of a Facebook group named “Wayne Says OK to Full Day K,” Respondent violated N.J.S.A. 18A:12-24(a), (c), and (g) “because it was proof that she surrendered her independent judgment to special interest groups and had a conflict of interest, in violation of the regulations.” Importantly, there is nothing in the Complaint which alleges that, in connection with any of these activities, Respondent acted in her official capacity as a Board member, represented herself to be a Board member, or otherwise used or relied upon her Board member status, title, or position. Instead, Respondent participated in these activities in her individual capacity as a taxpaying citizen. Complainants also failed to present any factual allegations that Respondent’s involvement in these activities created an “unwarranted” privilege, advantage, or employment for herself, a member of her immediate family, or an “other,” and also failed to articulate any connection between her involvement in these activities and a potential direct or indirect financial benefit. Absent some evidence that Respondent would reap a personal or financial benefit, her involvement in these activities does not violate the Act.

In addition, based on the Commissioner’s adoption of the ALJ’s legal and factual findings, namely that, “The [Board] was not a party to nor named in the complaint filed to set aside the results of the public ballot question,” and that Respondent did not “sue or file a complaint against the Board of which she was a member,” there is no factual evidence to support an argument that she engaged in a “transaction” which was in substantial conflict with her duties as a Board member, or that she represented any person other than the Board in a proceeding involving the Board. Therefore, and after review, the Commission finds that even if all of the facts as alleged in the Complaint are true, there is no sufficient, credible evidence to support a finding that Respondent violated N.J.S.A. 18A:12-24(a), (c), or (g) as alleged in Count 1.

2. Count 2 [Alleged Violations of N.J.S.A. 18A:12-24(a), (c), and (g)]

Complainants assert that by being listed as a Plaintiff in a complaint filed in Passaic County Superior Court against the Board, a matter/litigation which sought to invalidate the results of the public’s vote on the matter of full day kindergarten, Respondent violated N.J.S.A. 18A:12-24(a), (c), and (g) “because, generally, school board members are prohibited from filing lawsuits against the Board they serve.” Based on the Commissioner’s adoption of the ALJ’s legal and factual findings, specifically that, “The [Board] was not a party to nor named in the complaint filed to set aside the results of the public ballot question,” and that Respondent did not “sue or file a complaint against the Board of which she was a member,” the Commission finds that there is no sufficient, credible evidence to support a finding that Respondent violated N.J.S.A. 18A:12-24(a), (c), or (g) as alleged in Count 2.

3. Count 3 [Alleged Violations of N.J.S.A. 18A:12-24(a), (c), and (g)]

Complainants allege that although Respondent filed a “lawsuit” on December 3, 2015, the Board was not served until June 8, 2016, which was one hundred eighty-eight (188) days after it was filed. In addition, during this time, Respondent never disclosed to the Board that she had filed a lawsuit. Based on these facts, Complainants allege that Respondent violated N.J.S.A. 18A:12-24(a), (c), and (g) “because she directed her attorney to file the lawsuit on her behalf against the Board and she was aware of its existence and the fact that the District and the Board were not notified of the filing of the lawsuit... Additionally, it allowed [Respondent] to continue to vote on

matters regarding the budget without the Board or public being aware of the conflict.” In light of the Commissioner’s adoption of the ALJ’s legal and factual findings, namely that, “The [Board] was not a party to nor named in the complaint filed to set aside the results of the public ballot question,” Respondent did not “sue or file a complaint against the Board of which she was a member,” and that neither “Respondent nor her counsel have any control over the Superior Court Clerk’s Office or automated case management system,” the Commission finds that there is no sufficient, credible evidence to support a finding that Respondent violated N.J.S.A. 18A:12-24(a), (c), or (g) as alleged in Count 3.

4. Count 5 [Alleged Violations of N.J.S.A. 18A:12-24(a), (c), and (g)]

Complainants contend that at the Board’s reorganization meeting on January 7, 2016, Respondent voted in favor of full day kindergarten despite a plan to fully discuss proposals for full day kindergarten at a future meeting, and without first knowing whether the District’s budget could sustain it. Based on these facts, Complainants contend that Respondent violated N.J.S.A. 18A:12-24(a), (c), and (g) “because her vote was not made in terms of the educational welfare of children, but rather in order to advance her personal agenda of bringing [full day kindergarten] to [the District] and in support of the lawsuit she brought without disclosing [it] to the Board.” Notably absent from the Complaint are any facts which demonstrate that Respondent, by voting on this matter, engaged in a “transaction” that was in substantial conflict with the proper discharge of her duties; any facts which demonstrate that she had a direct or indirect financial involvement in the vote which might reasonably be expected to impair her objectivity or independence of judgment; and any facts that she represented any person other than the Board in any proceeding involving the District. Instead, the facts in the Complaint simply confirm that Respondent, time and time again, voiced her support and took public action on an issue about which she was passionate. Moreover, the ALJ found, and Commissioner agreed, that “The [Board] was not a party to nor named in the complaint filed to set aside the results of the public ballot question,” Respondent did not “sue or file a complaint against the Board of which she was a member,” and that neither “Respondent nor her counsel have any control over the Superior Court Clerk’s Office or automated case management system.” Therefore, and after review, the Commission finds that even if all of the facts as alleged in the Complaint are true, there is no sufficient, credible evidence to support a finding that Respondent violated N.J.S.A. 18A:12-24(a), (c), or (g) as alleged in Count 5.

5. Count 6 [Alleged Violations of N.J.S.A. 18A:12-24(a), (c), and (g)]

Complainants assert that because of the “lawsuit” Respondent filed against the Board, and because the administration expressed concern with the District’s ability to finance full day kindergarten, Respondent’s votes and continued discussions in favor of full day kindergarten violated N.J.S.A. 18A:12-24(a), (c), and (g) because “she placed her constituency and platform before the educational needs of the children in the District and attempted to administrate by ignoring advice of educational leaders in the District, further compromising the Board.” However, Complainants have not offered any factual evidence to connect Respondent’s actions and a potential direct or indirect financial benefit. Moreover, based on the Commissioner’s adoption of the ALJ’s legal and factual findings, specifically that, “The [Board] was not a party to nor named in the complaint filed to set aside the results of the public ballot question,” Respondent did not “sue or file a complaint against the Board of which she was a member,” and the fact that Respondent was

merely voicing her support and taking public action on an issue that she was passionate about, the Commission finds that there is no sufficient, credible evidence to support a finding that Respondent violated N.J.S.A. 18A:12-24(a), (c), or (g) as alleged in Count 6.

6. Count 7 [Alleged Violations of N.J.S.A. 18A:12-24(a), (b), (c), and (g)]

Complainants allege that by publicly critiquing the Board's administrators at a Board meeting, Respondent violated N.J.S.A. 18A:12-24(a), (b), (c), and (g) because "she was prohibited from making public[ly] disparaging statements [about] Administration and her comments were motivated by her personal agenda and lawsuit concerning [full day kindergarten]." However, there are no facts in the Complaint which substantiate that her "critique," which is more aptly described as commentary, demonstrate a potential violation of the Act, including N.J.S.A. 18A:12-24(a), (b), (c), or (g). Although the facts are clear that Respondent felt adamant about full day kindergarten and that she believed funding could be found in the budget, there is nothing in the Complaint, or in her purported "critique," which evidences that Respondent engaged in a "transaction" that was in substantial conflict with the discharge of her duties; that she attempted to secure an unwarranted privilege, advantage, or employment for herself, a member of her immediate family, or an "other"; that she had a direct or indirect financial involvement in her "critique" which might reasonably be expected to impair her objectivity or independence of judgment; or that she represented any person other than the Board in any proceeding involving the District. Again, the ALJ found, as matters of fact and law, that "The [Board] was not a party to nor named in the complaint filed to set aside the results of the public ballot question," Respondent did not "sue or file a complaint against the Board of which she was a member," and that neither "Respondent nor her counsel have any control over the Superior Court Clerk's Office or automated case management system." Therefore, and after review, the Commission finds that even if all of the facts as alleged in the Complaint are true, there is no sufficient, credible evidence to support a finding that Respondent violated N.J.S.A. 18A:12-24(a), (b), (c), or (g) as alleged in Count 7.

7. Count 8 [Alleged Violations of N.J.S.A. 18A:12-24(a), (c), and (g)]

Complainants contend that by not voting in favor of the preliminary budget at the March 14, 2016, Board meeting, ostensibly because full day kindergarten was not included, Respondent violated N.J.S.A. 18A:12-24(a), (c), and (g) because "her actions in support of her personal agenda and lawsuit put the District in financial peril." As a Board member, Respondent has the right to vote "yes" or "no" on any matter presented to the full Board for consideration. The fact that Respondent voted against the budget, regardless of the basis for doing so, does not constitute the basis for a violation of the Act. In addition, and as clearly set forth above, it has already been conclusively determined that "The [Board] was not a party to nor named in the complaint filed to set aside the results of the public ballot question," and that Respondent did not "sue or file a complaint against the Board of which she was a member." Therefore, and after review, the Commission finds that even if all of the facts as alleged in the Complaint are true, there is no sufficient, credible evidence to support a finding that Respondent violated N.J.S.A. 18A:12-24(a), (c), or (g) as alleged in Count 8.

8. Count 9 [Alleged Violations of N.J.S.A. 18A:12-24(a), (c), and (g)]

Complainants assert that when Respondent sought an Advisory Opinion from the Commission, purportedly in “retaliation” for the filing of the within matter by Complainants, she failed to notify the Board and/or the subject of her request (a Complainant in this matter). In this way, Complainants assert that Respondent violated N.J.A.C. 6A:28-1.7 and N.J.S.A. 18A:12-24(a), (c), and (g) because Respondent’s “failure to notify the Board or Ms. Albanese deprived both parties of due process.” Although the Commission agrees that Respondent failed to comply with the technical requirements of its regulations, namely N.J.A.C. 6A:28-1.7, the Commission notes that Respondent was not under any obligation to notify the Board as a whole. The Commission further notes that it ultimately declined to accept Respondent’s request for an Advisory Opinion because it did not concern prospective action. Had the Commission accepted the request, it would have required Respondent to comply with the requirements of N.J.A.C. 6A:28-1.7. Despite this technical violation, the Complaint does not articulate any facts which demonstrate that Respondent, by not copying the subject of her request, engaged in a “transaction” that was in substantial conflict with the proper discharge of her duties; any facts which demonstrate that she had a direct or indirect financial involvement in the request which might reasonably be expected to impair her objectivity or independence of judgment; or any facts that Respondent represented any person other than the Board in any proceeding involving the District. Therefore, and after review, the Commission finds that even if all of the facts as alleged in the Complaint are true, there is no sufficient, credible evidence to support a finding that Respondent violated N.J.S.A. 18A:12-24(a), (c), or (g) as alleged in Count 9.

9. Count 10 [Alleged Violations of N.J.S.A. 18A:12-24(a), (c), and (g)]

Complainants allege that Respondent made “negative” statements, through her attorney, that violated N.J.S.A. 18A:12-24(a), (c), and (g) because Respondent’s “actions compromised the confidentiality of the Board’s deliberative process and she acted in furtherance of her own personal agenda rather than the needs of the District.” As noted by the ALJ in her Initial Decision, this allegation “cites hearsay contained in newspaper reports of the dispute between the parties hereto and statements of [Respondent’s] attorney as evidence of negative comments attempting to smear other members of the Board.” In addition to being hearsay, these allegations do not demonstrate that Respondent engaged in a “transaction” that was in substantial conflict with the proper discharge of her duties; that she had a direct or indirect financial involvement in the request which might reasonably be expected to impair her objectivity or independence of judgment; nor that Respondent represented any person other than the Board in any proceeding involving the District. Therefore, and after review, the Commission finds that even if all of the facts as alleged in the Complaint are true, there is no sufficient, credible evidence to support a finding that Respondent violated N.J.S.A. 18A:12-24(a), (c), or (g) as alleged in Count 10.

C. Alleged Code Violations

Complainants allege, in various counts of their Complaint, that Respondent violated N.J.S.A. 18A:12-24.1(a), (b), (c), (d), (e), (f), (g), and (i) of the Code, and those provisions provide, respectively:

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.

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

As set forth in N.J.A.C. 6A:28-6.4(a)(1), factual evidence of a violation of N.J.S.A. 18A:12-24.1(a) shall include a copy of a final decision from any court of law or administrative agency of this State demonstrating that Respondent failed to enforce all laws, rules and regulations of the State Board of Education, and/or court orders pertaining to schools or that Respondent brought about changes through illegal or unethical procedures.

Pursuant to N.J.A.C. 6A:28-6.4(a)(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.

As set forth in N.J.A.C. 6A:28-6.4(a)(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.

Pursuant to N.J.A.C. 6A:28-6.4(a)(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 Respondent 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.

As set forth in N.J.A.C. 6A:28-6.4(a)(5), factual evidence of a violation of N.J.S.A. 18A:12-24.1(e) shall include evidence that Respondent made personal promises or took action beyond the scope of her duties such that, by its nature, had the potential to compromise the Board.

Pursuant to N.J.A.C. 6A:28-6.4(a)(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 Respondent, a member of her immediate family or a friend.

As set forth in N.J.A.C. 6A:28-6.4(a)(7), factual evidence of a violation of N.J.S.A. 18A:12-24.1(g) shall include evidence that Respondent took action to make public, reveal or disclose information that was not public under any laws, regulations or court orders of this State, or information that was otherwise confidential in accordance with board policies, procedures or practices. Factual evidence that Respondent violated the inaccurate information provision of N.J.S.A. 18A:12-24.1(g) shall include evidence that substantiates the inaccuracy of the information provided by Respondent and evidence that establishes that the inaccuracy was other than reasonable mistake or personal opinion or was not attributable to developing circumstances.

Pursuant to N.J.A.C. 6A:28-6.4(a)(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.

1. Count 1 [Alleged Violations of N.J.S.A. 18A:12-24.1(a), (b), (c), (e), and (f)]

Complainants contend that by contributing money to a GoFundMe page in November 2015 in support of full day kindergarten, visiting a fundraising booth on “Wayne Day” (which was on June 12, 2016) to collect donations in support of full day kindergarten, and by being photographed with members of a Facebook group named “Wayne Says OK to Full Day K,” Respondent violated N.J.S.A. 18A:12-24.1(a), (b), (c), (e), and (f) “because it was proof that she surrendered her independent judgment to special interest groups and had a conflict of interest, in violation of the regulations.” Despite their assertions, Complainants failed to provide a copy of a final decision from any court of law or administrative agency of this State demonstrating that Respondent failed to enforce all laws, rules and regulations of the State Board of Education, and/or court orders pertaining to schools or that Respondent brought about changes through illegal or unethical procedures; failed to allege facts that Respondent willfully made a decision contrary to the

educational welfare of children; failed to allege that she took action to effectuate a policy and plan without first consulting with those affected; failed to allege facts that Respondent took action beyond the scope of her duties that had the potential to compromise the Board; and failed to provide facts to support the position that Respondent took action on behalf of, or at the request of, a special interest group. Instead, Complainants merely provided factual evidence that Respondent was a proponent and supporter of full day kindergarten. Therefore, and after review, the Commission finds that even if all of the facts as alleged in the Complaint are true, there is no sufficient, credible evidence to support a finding that Respondent violated N.J.S.A. 18A:12-24.1(a), (b), (c), (e), or (f) as alleged in Count 1.

2. Count 2 [Alleged Violations of N.J.S.A. 18A:12-24.1(a), (b), (c), (e), (f), and (i)]

Complainants assert that by being listed as a Plaintiff in a complaint filed in Passaic County Superior Court against the Board, a matter/litigation which sought to invalidate the results of the public's vote on the matter of full day kindergarten, Respondent violated N.J.S.A. 18A:12-24.1(a), (b), (c), (e), (f), and (i) "because, generally, school board members are prohibited from filing lawsuits against the Board they serve." Based on the Commissioner's adoption of the ALJ's legal and factual findings, namely that, "The [Board] was not a party to nor named in the complaint filed to set aside the results of the public ballot question," and that Respondent did not "sue or file a complaint against the Board of which she was a member," the Commission finds that there is no sufficient, credible evidence to support a finding that Respondent violated N.J.S.A. 18A:12-24.1(a), (b), (c), (e), (f), or (i) as alleged in Count 2.

3. Count 3 [Alleged Violations of N.J.S.A. 18A:12-24.1(a), (b), (e), (f), and (i)]

Complainants allege that although Respondent filed a "lawsuit" on December 3, 2015, the Board was not served until June 8, 2016, which was one hundred eighty-eight (188) days after it was filed. In addition, during this time, Respondent never disclosed to the Board that she had filed a lawsuit. Based on these facts, Complainants allege that Respondent violated N.J.S.A. 18A:12-24.1(a), (b), (e), (f), and (i) "because she directed her attorney to file the lawsuit on her behalf against the Board and she was aware of its existence and the fact that the District and the Board were not notified of the filing of the lawsuit... Additionally, it allowed [Respondent] to continue to vote on matters regarding the budget without the Board or public being aware of the conflict." In light of the Commissioner's adoption of the ALJ's legal and factual findings, specifically that, "The [Board] was not a party to nor named in the complaint filed to set aside the results of the public ballot question," Respondent did not "sue or file a complaint against the Board of which she was a member," and that neither "Respondent nor her counsel have any control over the Superior Court Clerk's Office or automated case management system," the Commission finds that there is no sufficient, credible evidence to support a finding that Respondent violated N.J.S.A. 18A:12-24.1(a), (b), (e), (f), or (i) as alleged in Count 3.

4. Count 4 [Alleged Violations of N.J.S.A. 18A:12-24.1(a), (c), (d), (e), (f), (g), and (i)]

Complainants contend that at the Board's reorganization meeting on January 7, 2016, Respondent made "misinformed" statements concerning the role of the Board, and also made

disparaging comments about the administration. By making such statements and comments, Complainants contend Respondent violated N.J.S.A. 18A:12-24.1(a), (c), (d), (e), (f), (g), and (i) because “as a Board member, [Respondent] is prohibited from administering [the schools] and making negative public statements against [the] [a]dministration and/or that will compromise the Board.” Although Complainants may not appreciate Respondent’s adamant support for full day kindergarten, her statements at a public Board meeting were appropriate. Respondent is free to champion a cause and an issue that she feels is in the best interest of the District, even if other members of the Board disagree. As the ALJ noted, “[d]iscussion in America means dissent.” In addition, Complainants have not provided a modicum of the factual evidence needed to establish a violation of N.J.S.A. 18A:12-24.1(a), (c), (d), (e), (f), (g), and (i). Therefore, and after review, the Commission finds that even if all of the facts as alleged in the Complaint are true, there is no sufficient, credible evidence to support a finding that Respondent violated N.J.S.A. 18A:12-24.1(a), (c), (d), (e), (f), (g), or (i) as alleged in Count 4.

5. Count 5 [Alleged Violations of N.J.S.A. 18A:12-24.1(a), (b), (c), (d), (e), (f), (g) and (i)]

Complainants contend that at the Board’s reorganization meeting on January 7, 2016, Respondent voted in favor of full day kindergarten despite a plan to fully discuss proposals for full day kindergarten at a future meeting, and without first knowing whether the District’s budget could sustain it. Based on these facts, Complainants contend that Respondent violated N.J.S.A. 18A:12-24.1(a), (b), (c), (d), (e), (f), (g), and (i) “because her vote was not made in terms of the educational welfare of children, but rather in order to advance her personal agenda of bringing [full day kindergarten] to [the District] and in support of the lawsuit she brought without disclosing [it] to the Board.” Despite their assertions, Complainants failed to provide a copy of a final decision from any court of law or administrative agency of this State demonstrating that Respondent failed to enforce all laws, rules and regulations of the State Board of Education, and/or court orders pertaining to schools or that Respondent brought about changes through illegal or unethical procedures; failed to allege that she willfully made a decision contrary to the educational welfare of children; failed to allege that she took action to effectuate a policy and plan without first consulting with those affected; failed to allege facts that Respondent became directly involved in the day to day administration of the District; failed to allege facts that Respondent took action beyond the scope of her duties that had the potential to compromise the Board; failed to allege facts that Respondent took action on behalf of, or at the request of, a special interest group; failed to allege facts that Respondent took action to make public, reveal or disclose information that was not public under any laws, regulations or court orders of this State, or information that was otherwise confidential; and failed to allege facts that Respondent took deliberate action which resulted in undermining, opposing, compromising or harming school personnel in the proper performance of their duties.

Moreover, based on the Commissioner’s adoption of the ALJ’s legal and factual findings, specifically that, “The [Board] was not a party to nor named in the complaint filed to set aside the results of the public ballot question,” Respondent did not “sue or file a complaint against the Board of which she was a member,” and that neither “Respondent nor her counsel have any control over the Superior Court Clerk’s Office or automated case management system,” the Commission finds that even if all of the facts as alleged in the Complaint are true, there is no sufficient, credible

evidence to support a finding that Respondent violated N.J.S.A. 18A:12-24.1(a), (b), (c), (d), (e), (f), (g) or (i) as alleged in Count 5.

6. Count 6 [Alleged Violations of N.J.S.A. 18A:12-24.1(a), (b), (c), (d), (e), (f), (g), and (i)]

Complainants allege that because of the “lawsuit” Respondent filed against the Board, and because the administration expressed concern with the District’s ability to finance full day kindergarten, Respondent’s votes and continued discussions in favor of full day kindergarten violated N.J.S.A. 18A:12-24.1(a), (b), (c), (d), (e), (f), (g), and (i) because “she placed her constituency and platform before the educational needs of the children in the District and attempted to administrate by ignoring advice of educational leaders in the District, further compromising the Board.” Once again, based on the Commissioner’s adoption of the ALJ’s legal and factual findings, particularly that, “The [Board] was not a party to nor named in the complaint filed to set aside the results of the public ballot question,” Respondent did not “sue or file a complaint against the Board of which she was a member,” and the fact that Respondent was merely voicing her support and taking public action on an issue that she was passionate about, the Commission finds that there is no sufficient, credible evidence to support a finding that Respondent violated N.J.S.A. 18A:12-24.1(a), (b), (c), (d), (e), (f), (g), or (i) as alleged in Count 6.

7. Count 7 [Alleged Violations of N.J.S.A. 18A:12-24.1(a), (b), (c), (d), (e), (f), (g) and (i)]

Complainants contend that by publicly critiquing the Board’s administrators at a Board meeting, Respondent violated N.J.S.A. 18A:12-24.1(a), (b), (c), (d), (e), (f), (g), and (i) because “she was prohibited from making public[ly] disparaging statements [about] Administration and her comments were motivated by her personal agenda and lawsuit concerning [full day kindergarten].” However, Complainants have not articulated any facts which are sufficient to establish a violation of N.J.S.A. 18A:12-24.1(a), (b), (c), (d), (e), (f), (g), and (i). Furthermore, the ALJ found, as matters of fact and law, that “The [Board] was not a party to nor named in the complaint filed to set aside the results of the public ballot question,” Respondent did not “sue or file a complaint against the Board of which she was a member,” and that neither “Respondent nor her counsel have any control over the Superior Court Clerk’s Office or automated case management system.” Therefore, and after review, the Commission finds that even if all of the facts as alleged in the Complaint are true, there is no sufficient, credible evidence to support a finding that Respondent violated N.J.S.A. 18A:12-24.1(a), (b), (c), (d), (e), (f), (g), or (i) as alleged in Count 7.

8. Count 8 [Alleged Violations of N.J.S.A. 18A:12-24.1(a), (b), (c), (d), (e), (f), (g), and (i)]

Complainants assert that by not voting in favor of the preliminary budget at the March 14, 2016, Board meeting, ostensibly because full day kindergarten was not included, Respondent violated N.J.S.A. 18A:12-24.1(a), (b), (c), (d), (e), (f), (g), and (i) because “her actions in support of her personal agenda and lawsuit put the District in financial peril.” As noted herein, all Board members, including Respondent, have the right to vote in favor, or against, any matter presented to the full Board for consideration. Failure to approve or vote in favor of an issue does not, in and of

itself, constitute a viable basis for a violation of the Act. In addition, it has already been conclusively determined that “The [Board] was not a party to nor named in the complaint filed to set aside the results of the public ballot question,” and that Respondent did not “sue or file a complaint against the Board of which she was a member.” Therefore, and after review, the Commission finds that even if all of the facts as alleged in the Complaint are true, there is no sufficient, credible evidence to support a finding that Respondent violated N.J.S.A. 18A:12-24.1(a), (b), (c), (d), (e), (f), (g), or (i) as alleged in Count 8.

9. Count 9 [Alleged Violations of N.J.S.A. 18A:12-24.1(a), (b), (e), and (g)]

Complainants allege that when Respondent sought an Advisory Opinion from the Commission, purportedly in “retaliation” for the filing of the within matter by Complainants, she failed to notify the Board and/or the subject of her request (a Complainant in this matter). In this way, Complainants assert that Respondent violated N.J.S.A. 18A:12-24.1(a), (b), (e), and (g) because Respondent’s “failure to notify the Board or Ms. Albanese deprived both parties of due process.” The Commission again notes that the failure to notify the subject of the Advisory Opinion was a technical violation of the Commission’s regulations and, moreover, is moot because the request was denied by the Commission. In addition, as part of their Complaint, Complainants did not provide a copy of a final decision from any court of law or administrative agency of this State demonstrating that Respondent failed to enforce all laws, rules and regulations of the State Board of Education, and/or court orders pertaining to schools; did not include evidence that Respondent willfully made a decision contrary to the educational welfare of children; did not make personal promises or take private action that compromised the Board; and did not take 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. Instead, Respondent filed a request for an Advisory Opinion, as is her right pursuant to statute and the Commission’s regulations. The attempt by Complainants to use Respondent’s request as a basis to allege a violation of the Act is disingenuous. Therefore, and after review, the Commission finds that even if all of the facts as alleged in the Complaint are true, there is no sufficient, credible evidence to support a finding that Respondent N.J.S.A. 18A:12-24.1(a), (b), (e), or (g) as alleged in Count 9.

10. Count 10 [Alleged Violations of N.J.S.A. 18A:12-24.1(a), (e), (f), (g), and (i)]

Complainants contend that Respondent made “negative” statements, through her attorney, that violated N.J.S.A. 18A:12-24.1(a), (e), (f), (g), and (i) because Respondent’s “actions compromised the confidentiality of the Board’s deliberative process and she acted in furtherance of her own personal agenda rather than the needs of the District.” As noted by the ALJ in her Initial Decision, this allegation “cites hearsay contained in newspaper reports of the dispute between the parties hereto and statements of [Respondent’s] attorney as evidence of negative comments attempting to smear other members of the Board.” In addition to being hearsay, these statements do not demonstrate that Respondent engaged in any activity that is possibly violative of N.J.S.A. 18A:12-24.1(a), (e), (f), (g), and (i). These allegations do not reference a final decision from any court or administrative State agency; do not include evidence that Respondent made any personal promises or took action beyond the scope of her duties; that she acted on behalf of or at the request of a special interest group; that she revealed or disclosed confidential information; or that she took action which undermined school personnel. Therefore, and after review, the Commission finds that

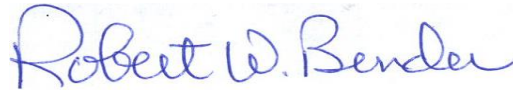
even if all of the facts as alleged in the Complaint are true, there is no sufficient, credible evidence to support a finding that Respondent violated N.J.S.A. 18A:12-24.1(a), (e), (f), (g), or (i) as alleged in Count 10.

Accordingly, and granting all inferences in favor of the non-moving party (Complainants), the Commission has determined that Complainant has not alleged facts sufficient to state a claim for a violation of N.J.S.A. 18A:12-24(a) [Counts 1-3, and Counts 5-10], N.J.S.A. 18A:12-24(b) [Count 7], N.J.S.A. 18A:12-24(c) [Counts 1-3, and Counts 5-10], N.J.S.A. 18A:12-24(g) [Counts 1-3, and Counts 5-10], N.J.S.A. 18A:12-24.1(a) [Counts 1-10], N.J.S.A. 18A:12-24.1(b) [Counts 1-3, and Counts 5-9], N.J.S.A. 18A:12-24.1(c) [Counts 1-2 and Counts 4-8], N.J.S.A. 18A:12-24.1(d) [Counts 4-8], N.J.S.A. 18A:12-24.1(e) [Counts 1-10], N.J.S.A. 18A:12-24.1(f) [Counts 1-8 and Count 10], N.J.S.A. 18A:12-24.1(g) [Counts 4-10], and N.J.S.A. 18A:12-24.1(i) [Counts 2-8, and Count 10]; therefore, the Commission *grants* the Motion to Dismiss in its entirety.

IV. DECISION

Pursuant to N.J.S.A. 18A:12-29(b), the Commission hereby notifies Complainant and Respondent that, for the reasons set forth above, this matter is dismissed in its entirety.

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: November 1, 2017

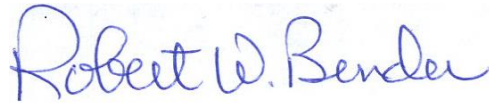
Resolution Adopting Decision – C33-16

WHEREAS, at its meeting on October 17, 2017, the School Ethics Commission (Commission) considered the Complaint, the Motion to Dismiss in Lieu of Answer (Motion to Dismiss), the Response to Motion to Dismiss, and additional submissions from the parties as requested by the Commission; and

WHEREAS, at its meeting on October 17, 2017, the Commission discussed granting the Motion to Dismiss in its entirety; and

WHEREAS, at its meeting on October 31, 2017, the Commission reviewed and voted to approve the within decision memorializing its actions/findings from October 17, 2017; 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 October 31, 2017.



Kathryn A. Whalen, Director
School Ethics Commission