

***Before the School Ethics Commission
Docket No.: C15-20
Decision on Motion to Dismiss***

**Anthony Prezioso,
Complainant**

v.

**Kathleen Kolupanowich,
Monroe Township Board of Education, Middlesex County,
Respondent**

I. Procedural History

This matter arises from a Complaint that was filed on March 12, 2020, by Anthony Prezioso (Complainant), alleging that Kathleen Kolupanowich (Respondent), a member and President of the Monroe Township Board of Education (Board), violated the School Ethics Act (Act), *N.J.S.A.* 18A:12-21 *et seq.* More specifically, the Complaint alleges that Respondent violated *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) of the Code of Ethics for School Board Members (Code).

On March 17, 2020, the Complaint was served on Respondent, via regular and certified mail, notifying her that charges were filed against her with the School Ethics Commission (Commission), and advising that she had twenty (20) days to file a responsive pleading. On June 22, 2020, Respondent filed a Motion to Dismiss in Lieu of Answer (Motion to Dismiss), and also alleged that the Complaint is frivolous. On July 6, 2020, Complainant filed a response to the Motion to Dismiss and allegation of frivolous filing.

The parties were notified by correspondence dated July 13, 2020, that this matter would be placed on the Commission's agenda for its meeting on July 21, 2020, in order to make a determination regarding the Motion to Dismiss and allegation of frivolous filing. At its meeting on July 21, 2020, the Commission considered the filings in this matter and, at its meeting on August 25, 2020, the Commission voted to find that the allegations in the Complaint were timely filed, but to grant the Motion to Dismiss in its entirety because Complainant failed to plead sufficient, credible facts to support a finding that Respondent violated *N.J.S.A.* 18A:12-24.1(c), *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/or *N.J.S.A.* 18A:12-24.1(j) as alleged in the Complaint. The Commission also voted to find the Complaint not frivolous, and to deny Respondent's request for sanctions.

II. Summary of the Pleadings

A. *The Complaint*

By way of background, and relevant to each alleged violation of the Code set forth in the Complaint, a friend of Respondent's, who is also the spouse of a former Board member, was on the agenda "for a paid school position," but was listed under "a different name." According to Complainant, Respondent "knew this person and her dual name" but did not "reveal this to the public" or the other members of the Board "at the time of any vote." During the public comment portion of a Board meeting, Complainant brought "awareness to the public" about Respondent's actions, and she "retaliated" against him in public session as further described below.

Based on the facts set forth above, Complainant alleges that Respondent violated *N.J.S.A.* 18A:12-24.1(c) because she failed to confine her actions to policy making, planning, and appraisal when she "used her position" as Board President to "[p]urposely embarrass a public member" (Complainant), and to make "a statement without proof or investigation that was 100% false in order to retaliate" against Complainant for advising the public about her (Respondent's) conduct; *N.J.S.A.* 18A:12-24.1(d) because Respondent "took it upon herself to stop the [Board] meeting right after the public forum without any reason ... with the sole purpose to act against a public member" (Complainant); *N.J.S.A.* 18A:12-24.1(e) because, after listening to Complainant speak during public comment, Respondent "acted in retaliation for [Complainant's] comments" about her (Respondent's) alleged cronyism, and discredited Complainant "in public with a false statement"; *N.J.S.A.* 18A:12-24.1(f) because she did not reveal to the public, or to any other members of the Board, that she knew the person listed on the agenda at the time of the Board's vote; *N.J.S.A.* 18A:12-24.1(g) because, during the October 16, 2019, Board meeting, Respondent made a statement in open session to "discredit and embarrass" Complainant in public, "suggesting" that he lied. According to Complainant, Respondent's statement was "in no way ... accurate," was "false and misleading" to the public, and has caused "great harm" to Complainant's reputation.

Complainant further asserts that Respondent violated *N.J.S.A.* 18A:12-24.1(h) because Respondent "did not have consideration to inform the [B]oard on a paid position for someone she knew was using a different name and in [Complainant's] opinion took an opportunity away from someone else to attain that job that may have been more qualified"; *N.J.S.A.* 18A:12-24.1(i) because when Respondent did not inform the Board that her friend/the spouse of a former Board member was using a different name she "took away the right for some other school personnel to have a chance at that particular job offer"; and *N.J.S.A.* 18A:12-24.1(j) because Respondent made a public statement to embarrass a member of the public (Complainant) "without looking at a recording of the meeting and moving forward without any investigation from an administrative officer." Complainant submits that Respondent's statement has "completely" tarnished his reputation "because of the embarrassment put on [him] from her false statement."

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

Following receipt of the Complaint, Respondent filed a Motion to Dismiss and allegation of frivolous filing. Respondent first argues that the alleged violations of *N.J.S.A.* 18A:12-24.1(f), *N.J.S.A.* 18A:12-24.1(h), and *N.J.S.A.* 18A:12-24.1(i) are time barred. The “most recent date of preapproval” as a substitute for the former Board member’s spouse was August 21, 2019. Complainant had one hundred eighty (180) days from August 21, 2019, to file his Complaint, which would have been February 17, 2020; however, Complainant did not file his Complaint until March 9, 2020. In addition, because the agendas for every Board meeting are posted on the District’s website (and remain on the website thereafter), Complainant “should have known of such events, which form the basis for these allegations even prior to August 21, 2019.” As such, Respondent maintains that the alleged violations of *N.J.S.A.* 18A:12-24.1(f), *N.J.S.A.* 18A:12-24.1(h), and *N.J.S.A.* 18A:12-24.1(i) should be dismissed as time barred.

Respondent’s account of the October 16, 2019, Board meeting varies from Complainant’s account as set forth in the Complaint. According to Respondent, “the first Public Forum is limited to Agenda items only.” Complainant was the first member of the public to speak, and he indicated that he was going to speak about “Patty Lang, who was a Board member at the time.” Respondent questioned Complainant as to whether Ms. Lang was on the Agenda, to which he replied, “her name is on the Agenda.” Complainant also added, “And I asked the attorney if her name is on the agenda, can I speak to it? And she said yes.” Because Complainant said “the” and not “an attorney,” and because he stated “she” and Board counsel is a female, Respondent believed that Complainant spoke to Board counsel, and allowed him (Complainant) to continue. According to Respondent, “the only place on the agenda that Patty Lang’s name was mentioned was on the roll call where all Board members’ names are listed.”

Subsequently, and during a recess, the Business Administrator (BA) informed Respondent that Board counsel had not spoken to Complainant and/or given him advice. When the Board returned from recess to public session, Respondent addressed the public as follows:

A little while ago [Complainant] came up to the Board of Education stating that he had spoken to the Board Attorney and the Board Attorney told him that because Patty Lang’s name was on the agenda as a roll call that he was entitled to speak about her. First of all that’s not true. Our Board Attorney never spoke to [Complainant]. Number two, just because you’re on a roll call does not make you a person on the agenda for someone to speak about. That will never happen again. I will make sure that the next time somebody comes up and does that that they will be told that that’s a disruption to the Board ... and will not be allowed. So I just wanted to make a clarification because when we find out that something is not true and somebody spends four minutes saying something, it needs to be addressed. So I apologize for that.

In her Motion to Dismiss, Respondent also notes that the individual who was listed on the agenda has been a substitute in the Monroe Township School District (District) since 2012; Respondent never spoke to this individual about her name being on the agenda; and it is the responsibility of the Superintendent to recommend all hires to the Board, and for the Board to vote on those recommendations.

With Respondent's account in mind, and as to the alleged violation of *N.J.S.A. 18A:12-24.1(c)*, Respondent argues that the Complaint is "utterly devoid of any actual facts in support of Complainant's allegation." On the contrary, Respondent argues that "the evidence in this matter clearly demonstrates that [she] fully complied with her obligations as Board President at the public meeting" In addition, the evidence "demonstrates that Respondent acted in conformity with her role as Board President" at the meeting on October 16, 2019, "when she provided clarification to the public regarding the permissible scope of the first Public Forum." Respondent maintains that Complainant did not provide any facts to prove 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 [her] duties" and, as such, he has failed to state a claim for a violation of *N.J.S.A. 18A:12-24.1(c)*.

Regarding the alleged violation of *N.J.S.A. 18A:12-24.1(d)*, Respondent argues that Complainant did not provide any evidence that Respondent "gave any 'order' to school personnel or otherwise became directly involved in the day-to-day administration of the school district." Respondent again maintains that the evidence "firmly demonstrates" that she "fully complied with her obligations as Board President" to preside over the October 16, 2019, Board meeting. The evidence also demonstrates that a Board member made a motion for a recess, which was seconded by another Board member, and then the full Board voted on the motion. Based on these facts, Respondent asserts that the Complaint "fails to state a claim for a violation of *N.J.S.A. 18A:12-24.1(d)*"

As for the alleged violation of *N.J.S.A. 18A:12-24.1(e)*, Respondent maintains that Complainant again fails to provide sufficient facts to support a violation. Instead, the evidence demonstrates that while acting in her capacity as Board President, she informed the public that "in the future, [she] would not allow a member of the public to speak about a Board member during the first Public Forum just because their name is on roll call." Respondent further maintains that this statement is not a "personal promise," and is "wholly within the scope of her duties as the Board President and presider at Board meetings as well as being consonant with Board Bylaws 0171 and 0164." Respondent asserts that the Complaint fails to state a claim for a violation of *N.J.S.A. 18A:12-24.1(e)*, and should be dismissed.

Regarding the alleged violation of *N.J.S.A. 18A:12-24.1(f)*, and in addition to being time barred, Respondent asserts that "the Complaint does not include any factual evidence" to support a violation, and there is "no ethical responsibility for board members to provide information to the public concerning the last name of any candidate for any position who is recommended by the Superintendent on a monthly agenda." In addition, Respondent "merely" voted on a recommendation that the Superintendent made, which is Respondent's responsibility as a Board member. According to Respondent, Complainant does not provide any facts to support the alleged violation of *N.J.S.A. 18A:12-24.1(f)*, and it should be dismissed.

As to the alleged violation of *N.J.S.A. 18A:12-24.1(g)*, Respondent argues that Complainant did not provide any evidence that Respondent "disclosed any information that was not public or was otherwise confidential." On the contrary, Respondent made a "clarification during Public Session regarding the permissible scope of the first Public Forum," and that this clarification was "wholly within the scope of her duties as the Board President and presider at the Board meetings as well as being consonant with Board Bylaws 0171 and 0164." In addition,

Complainant did not provide any evidence that “‘substantiates the inaccuracy of the information’ that was provided in Respondent’s statement,” as required by an allegation of *N.J.S.A.* 18A:12-24.1(g). Respondent’s initial belief that Complainant had spoken with Board counsel, based on Complainant’s statement during “Public Forum,” was “reasonable.” Once Respondent learned that Complainant had not spoken to Board counsel, it was “also reasonable” for her to address the public “to ensure that the public was not misled and to inform the public that in the future, Respondent would not allow a member of the public to speak about a Board member ... just because their name is listed on the roll call.” Respondent maintains that the Complaint fails to state a claim for a violation of *N.J.S.A.* 18A:12-24.1(g).

Regarding the alleged violation of *N.J.S.A.* 18A:12-24.1(h), Respondent maintains that, in addition to being time barred, the Complaint does not include any factual evidence that Respondent “acted on a personnel matter without a recommendation of the chief administrative officer.” Instead, the evidence demonstrates that the Superintendent recommended the reapproval of Ms. Lanza/Masters, and Respondent – along with the members of the Board – voted on the recommendation. In addition, the evidence provided supports that Ms. Lanza/Masters has been a substitute in the District since October 17, 2012, and there “is no ethical responsibility for Board members to provide information to the public concerning the last name of any candidate for any position who is recommended by the Superintendent” Furthermore, “only the Superintendent is statutorily authorized to make recommendations ...” and it is the Board’s responsibility to vote on those recommendations. Respondent further maintains that she acted on a personnel matter following a recommendation by the Superintendent and it is her right, as a Board member to vote on matters as she sees fit. As such, the alleged violation of *N.J.S.A.* 18A:12-24.1(h) should be dismissed.

As to the alleged violation of *N.J.S.A.* 18A:12-24.1(i), Respondent asserts that, in addition to being time barred, the Complaint does not include any factual evidence that Respondent took any action to “undermine, oppose, compromise or harm school personnel.” On the contrary, “the evidence clearly demonstrates that Respondent fully complied with her obligations as a Board member to vote on the recommendation of the Superintendent” Respondent restates that she is not required to provide information to the public about the last name of candidates, and this allegation should also be dismissed.

Regarding the alleged violation of *N.J.S.A.* 18A:12-24.1(j), Respondent argues that the Complaint does not include any factual evidence that Respondent “acted on or attempted to resolve a complaint, or conducted an investigation or inquiry related to a complaint.” Respondent reaffirms that she “fully complied with her obligations as Board President” As such, Respondent maintains that the alleged violation of *N.J.S.A.* 18A:12-24.1(j) should be dismissed.

Finally, Respondent contends that the Complaint is frivolous because “it is clear” that Complainant filed the Complaint in bad faith, and solely for the purpose of harassment and malice. Respondent maintains that this is Complainant’s second Complaint against Respondent and, just as the first one, this Complaint is “baseless” and “devoid of any factually relevant evidence.” Complainant, as a former Board member, “knew, or should have known, that the Complaint was without reasonable basis in law or equity and could not be supported by a good faith argument for a modification of existing law.” Respondent “respectfully requests” that the Commission dismiss the Complaint, and impose appropriate sanctions.

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

In his response to the Motion to Dismiss, Complainant argues that at the October 16, 2019, Board meeting, Respondent called for a recess after Complainant was finished speaking, and upon return from the “10 minute” recess, Respondent “took it upon herself” to make a statement, which implied that Complainant lied. According to Complainant, Respondent made the statement “without proof or proper investigation that was 100% false, in order to retaliate for [Complainant] bringing awareness to the public about her recent actions.” Complainant reasserts that Respondent used her position as Board President to “purposely embarrass” him, and violated *N.J.S.A.* 18A:12-24.1(c) by “[f]ailing to confine her actions to ‘policy making, planning, and appraisal’” because “[t]here was no investigation plan or appraisal what so ever (sic) except for calling an attorney who had no idea what was going on. [Respondent] [n]ever took the time to justify her response to a member of the public. She acted on her own.”

Complainant also reasserts that Respondent violated *N.J.S.A.* 18A:12-24.1(d) because she “took it upon herself to stop the [Board] meeting right after the public forum” without providing the public or the Board the “real reason” for the recess, which was to “act against a public member.” Complainant argues Respondent did not act “together with [her] fellow [B]oard members,” “[t]here was no investigation or discussion with the board members.” Complainant further argues that Respondent’s “sole purpose [of] stopping the meeting was to prove [Complainant] wrong and call the [Board] attorney who had no idea as to what was actually said.”

Complainant further reaffirms that Respondent violated *N.J.S.A.* 18A:12-24.1(e) because she compromised the Board by making a false public statement in an attempt to discredit and embarrass Complainant, without checking the facts. Complainant argues that he said “[a]n attorney ... not the attorney ... which most of the public heard clearly.”

Complainant also reasserts that Respondent violated *N.J.S.A.* 18A:12-24.1(f) because Respondent used her position on the Board “for the gain of friends,” because she knew, the former Board member’s spouse – Ms. Lanza, also uses the name Ms. Masters, and Respondent did not “reveal this to the public or [B]oard members at the time of any vote.”

Regarding the violation of *N.J.S.A.* 18A:12-24.1(g), Complainant further reaffirms that Respondent’s statement against him was “false and damaging to his reputation.” According to Complainant, Respondent “could have easily asked to see evidence,” and because she did not investigate or view the video recording of the meeting, she “did not provide accurate information.”

As to the violations of *N.J.S.A.* 18A:12-24.1(h) and *N.J.S.A.* 18A:12-24.1(i), Complainant also reasserts that by voting for her friend (on July 15, 2014, July 19, 2017, and August 22, 2018), Respondent provided Ms. Lanza/Masters with “an advantage for employment,” “took an opportunity away for someone else to attain that job that may have been more qualified,” and “does not protect [school personnel’s] best interests.”

Regarding the violation of *N.J.S.A.* 18A:12-24.1(j), Complainant further reaffirms that Respondent made the public statement “to embarrass a public member without looking at a recording of the meeting and moving forward without any investigation from an administrative

officer who was present and never went to the persons recording the meeting.” Complainant argues that Respondent did not ask him to “clarify what attorney [he] spoke to” nor did Respondent review the audio during the recess before making her statement.

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 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 alleged sufficient facts which, if true, could support a finding that Respondent violated *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/or *N.J.S.A. 18A:12-24.1(j)* as asserted in the Complaint.

B. *Alleged Untimeliness*

In her Motion to Dismiss, Respondent argues that the alleged violations of *N.J.S.A. 18A:12-24.1(f)*, *N.J.S.A. 18A:12-24.1(h)*, and *N.J.S.A. 18A:12-24.1(i)* - all of which relate to the Board’s appointment of Ms. Lanza/Masters - are time barred. According to Respondent, the “most recent date of preapproval” as a substitute for the former Board member’s spouse was August 21, 2019. Complainant had one hundred eighty (180) days from August 21, 2019, or until February 17, 2020, to file his Complaint. Because Complainant did not file his Complaint until March 9, 2020, the alleged violations of *N.J.S.A. 18A:12-24.1(f)*, *N.J.S.A. 18A:12-24.1(h)*, and *N.J.S.A. 18A:12-24.1(i)* should be dismissed. Complainant did not address the untimeliness of these allegations in his response to the Motion to Dismiss.

The Commission’s regulations provide a one hundred eighty (180) day limitation period for filing a complaint. More specifically, *N.J.A.C. 6A:28-6.5(a)* provides, in relevant part:

- (a) Complaints shall be filed within 180 days of notice ***of the events which form the basis of the alleged violation(s)***. A complainant shall be deemed to be notified of events which form the basis of the alleged violation(s) ***when he or she knew of such events or when such events were made public so that one using reasonable diligence would know or should have known*** (emphasis added).

Pursuant to *N.J.A.C. 6A:28-6.5(a)*, the Commission must determine when Complainant knew of the events which form the basis for the allegations in the Complaint, or when such events were made public so that one using reasonable diligence would know, or should have known, of such events.

In its review of the pleadings, *and construing the facts in the light most favorable to Complainant*, the Commission finds that Complainant knew of the events giving rise to the

allegations in the Complaint, including the fact that Ms. Lanza and Ms. Masters are the same person, at the time he made his comments during the public portion of the Board's meeting on October 16, 2019. Therefore, the Commission finds that all of the allegations in the Complaint were timely filed.

C. *Alleged Code Violations*

In the Complaint, Complainant contends that Respondent violated *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)*. These provisions of the Code provide:

- c. I will confine my board action to policy making, planning, and appraisal, and I will help to frame policies and plans only after the board has consulted those who will be affected by them.
- 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.

Complainant argues Respondent violated *N.J.S.A. 18A:12-24.1(c)* because she failed to confine her actions to policy making, planning, and appraisal when she “used her position” as Board President to “[p]urposely embarrass” Complainant, and to make “a statement without proof or investigation that was 100% false in order to retaliate” against Complainant.

Respondent counters that “the evidence in this matter clearly demonstrates that [she] fully complied with her obligations as Board President” when she “provided clarification to the public regarding the permissible scope of the first Public Forum.” Respondent maintains that Complainant did not provide any facts to prove 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 [her] duties.”

Pursuant to *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.

After review of the Complaint, the Commission finds that even if the facts as alleged are proven true by sufficient credible evidence, they would not support a finding that Respondent violated *N.J.S.A.* 18A:12-24.1(c). Despite Complainant’s belief to the contrary, as the Board President, Respondent is responsible for facilitating and overseeing the conduct of a Board meeting. As such, Respondent was well within her duty to address publicly, following a brief recess, what she perceived as a violation or misuse of the “first Public Forum.” Although it is clear that Complainant felt targeted by Respondent’s statements, and did not agree with the substance, this does not mean that she was not authorized to make those statements. Therefore, the Commission finds that the alleged violation of *N.J.S.A.* 18A:12-24.1(c) should be dismissed.

Complainant claims that, in violation of *N.J.S.A.* 18A:12-24.1(d), Respondent “took it upon herself to stop the [Board] meeting right after the public forum without any reason ... with the sole purpose to act against” Complainant. Respondent counters that Complainant did not provide any evidence that Respondent “gave any ‘order’ to school personnel or otherwise became directly involved in the day-to-day administration of the school district.” Respondent again maintains that the evidence “firmly demonstrates” that she “fully complied with her obligations as Board President.”

As set forth in *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.

Based on its review of the Complaint, the Commission finds that even if the facts as alleged are proven true by sufficient credible evidence, they would not support a finding that Respondent violated *N.J.S.A.* 18A:12-24.1(d). Although the Board did adjourn for a brief recess at the conclusion of “first Public Forum,” it is clear that the request for a brief recess followed a motion and second from *other* Board members, and then a vote by the entire body. Because the brief recess followed the appropriate procedural requirements and Respondent, as the Board President, is responsible for ensuring that the Board complies with same, there is no doubt that Respondent acted in accordance with her duties and responsibilities. As a result, and because there is no factual support for a finding that Respondent gave a direct order to school personnel

or became directly involved in activities or functions that are the responsibilities of others, the Commission finds that the alleged violation of *N.J.S.A. 18A:12-24.1(d)* should be dismissed.

Complainant alleges Respondent violated *N.J.S.A. 18A:12-24.1(e)* because, after listening to Complainant speak during public comment, Respondent “acted in retaliation for [his] comments” about her alleged cronyism, and discredited Complainant “in public with a false statement.” Respondent counters that the evidence demonstrates that while acting in her capacity as Board President, she informed the public that “in the future, [she] would not allow a member of the public to speak about a Board member during the first Public Forum just because their name is on roll call.” Respondent further maintains that this statement is not a “personal promise,” and is “wholly within the scope of her duties as the Board President and presider at Board meetings as well as being consonant” with applicable Board bylaws.

Pursuant to *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.

After review of the Complaint, the Commission finds that even if the facts as alleged are proven true by sufficient credible evidence, they would not support a finding that Respondent violated *N.J.S.A. 18A:12-24.1(e)*. There is, as argued by Respondent, absolutely no factual assertion or evidence that she made a personal promise of any kind. As for Respondent’s public statements about the topics and subjects which are, and are not, appropriate for “first Public Forum,” Respondent was acting within the scope of her authority as Board President when she made the statements, even if Complainant felt those statements were inappropriately directed at him. Therefore, the Commission finds that the alleged violation of *N.J.S.A. 18A:12-24.1(e)* should be dismissed.

Complainant further asserts that Respondent violated *N.J.S.A. 18A:12-24.1(f)* because she did not reveal to the public, or to any other members of the Board, that she knew the person listed on the agenda (Ms. Lanza/Masters) at the time of the Board’s vote. Respondent counters that “the Complaint does not include any factual evidence” to support a violation, and there is “no ethical responsibility for board members to provide information to the public concerning the last name of any candidate for any position who is recommended by the Superintendent on a monthly agenda.”

As set forth in *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 herself, a member of her immediate family or a friend.

Based on its review of the Complaint, the Commission finds that even if the facts as alleged are proven true by sufficient credible evidence, they would not support a finding that Respondent violated *N.J.S.A. 18A:12-24.1(f)*. The sole basis for the alleged violation of this subsection of the Code is that Respondent failed to disclose that she “knew” Ms. Lanza/Masters at the time the Board voted to appoint her. Even if Respondent “knew” Ms. Lanza/Masters at the time she was appointed, Respondent is not under a *per se* obligation to disclose this fact. Based

on the information and facts set forth in the Complaint, there is no evidence that Respondent used her position as a Board member and/or Board President to acquire a benefit for Ms. Lanza/Masters; instead, Respondent simply voted on a personnel matter recommended by the Superintendent. Absent some suggestion, and factual support for such a suggestion, that Respondent spearheaded this appointment and/or the appointment was unwarranted in some way, the Commission finds that the alleged violation of *N.J.S.A. 18A:12-24.1(f)* should be dismissed.

Complainant contends Respondent violated *N.J.S.A. 18A:12-24.1(g)* because, during a Board meeting, Respondent made a statement in open session to “discredit and embarrass” Complainant, and Respondent’s statement was “in no way ... accurate,” was “false and misleading,” and has caused “great harm” to Complainant’s reputation. Respondent counters that Complainant did not provide any evidence that Respondent “disclosed any information that was not public or was otherwise confidential.” On the contrary, Respondent made a “clarification during Public Session regarding the permissible scope of the first Public Forum,” and that this clarification was “wholly within the scope of her duties as the Board President and presider at the Board meetings as well as being consonant” with applicable Board bylaws. Complainant also did not provide any evidence that “‘substantiates the inaccuracy of the information’ that was provided in Respondent’s statement,” and Respondent’s initial belief that Complainant had spoken with Board counsel, based on Complainant’s statement during “Public Forum,” was “reasonable.”

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

After review of the Complaint, the Commission finds that even if the facts as alleged are proven true by sufficient credible evidence, they would not support a finding that Respondent violated *N.J.S.A. 18A:12-24.1(g)*. Complainant has not identified the specific piece of information disclosed by Respondent that was confidential, and/or the basis for the alleged confidentiality. As for the suggestion that any part of Respondent’s statements were “inaccurate,” Complainant has not provided any evidence to substantiate the inaccuracy of Respondent’s statement; in fact, a review of the video evidence corroborates Respondent’s version of the events that took place at the Board meeting. Therefore, the Commission finds that the alleged violation of *N.J.S.A. 18A:12-24.1(g)* should be dismissed.

Complainant argues, in violation of *N.J.S.A. 18A:12-24.1(h)*, Respondent “did not have consideration to inform the [B]oard on a paid position for someone she knew was using a different name and in [Complainant’s] opinion took an opportunity away for someone else to attain that job that may have been more qualified.” Respondent counters that the Complaint does not include any factual evidence that Respondent “acted on a personnel matter without a recommendation of the chief administrative officer.” Instead, the evidence demonstrates that the

Superintendent recommended the reapproval of Ms. Lanza/Masters, and Respondent – along with the members of the Board – voted on the recommendation. In addition, the evidence demonstrates that Ms. Lanza/Masters has been a substitute in the District since 2012.

As set forth in *N.J.A.C. 6A:28-6.4(a)(8)*, factual evidence of a violation of *N.J.S.A. 18A:12-24.1(h)* shall include evidence that Respondent acted on a personnel matter without a recommendation of the chief administrative officer.

Based on its review of the Complaint, the Commission finds that even if the facts as alleged are proven true by sufficient credible evidence, they would not support a finding that Respondent violated *N.J.S.A. 18A:12-24.1(h)*. The facts unequivocally establish that Respondent voted on a personnel matter that was, in actuality, before the Board as a result of the Superintendent’s recommendation. Complainant’s issue with Respondent’s action is not that it was taken without the necessary recommendation, but that Respondent failed to disclose that she “knew” the subject of the motion at the time of her vote. In the absence of any factual evidence that Respondent acted without the recommendation of the Superintendent, and because there is factual evidence which undeniably shows that Respondent acted upon the Superintendent’s recommendation, the Commission finds that the alleged violation of *N.J.S.A. 18A:12-24.1(h)* should be dismissed.

Complainant claims Respondent violated *N.J.S.A. 18A:12-24.1(i)* because she did not inform the Board that her friend/the spouse of a former Board member was using a different name she “took away the right for some other school personnel to have a chance at that particular job offer.” Respondent counters that the Complaint does not include any factual evidence that Respondent took any action to “undermine, oppose, compromise or harm school personnel.” Instead, “the evidence clearly demonstrates that Respondent fully complied with her obligations as a Board member to vote on the recommendation of the Superintendent”

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.

After review of the Complaint, the Commission finds that even if the facts as alleged are proven true by sufficient credible evidence, they would not support a finding that Respondent violated *N.J.S.A. 18A:12-24.1(i)*. The Commission agrees with Respondent that her (Respondent’s) failure to inform the Board that she knew Ms. Lanza/Masters – even if she was required to disclose this information (which the Commission does not find) – does not constitute deliberate action that undermined, opposed, compromised, or harmed unnamed and theoretical “other school personnel” in the proper performance of their duties. Therefore, the Commission finds that the alleged violation of *N.J.S.A. 18A:12-24.1(i)* should be dismissed.

Complainant alleges, in violation of *N.J.S.A. 18A:12-24.1(j)*, Respondent made a public statement to embarrass a member of the public (Complainant) “without looking at a recording of the meeting and moving forward without any investigation from an administrative officer.” Complainant submits that Respondent’s statement has “completely” tarnished his reputation “because of the embarrassment put on [him] from her false statement.” Respondent counters that

the Complaint does not include any factual evidence that Respondent “acted on or attempted to resolve a complaint, or conducted an investigation or inquiry related to a complaint.” Respondent reaffirms that she “fully complied with her obligations as Board President”

As set forth in *N.J.A.C.* 6A:28-6.4(a)(10), factual evidence of a violation of *N.J.S.A.* 18A:12-24.1(j) shall include evidence that Respondent 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.

Based on its review of the Complaint, the Commission finds that even if the facts as alleged are proven true by sufficient credible evidence, they would not support a finding that Respondent violated *N.J.S.A.* 18A:12-24.1(j). It is clear that the “complaint” actually levied by Complainant at the Board meeting was, among other things, that Respondent failed to disclose that she knew, and/or was friends with, an individual who was being appointed by the Board. However, it is equally clear that Respondent’s public statements thereafter did not address Complainant’s “complaint” about her (Respondent’s) alleged “cronyism,” but instead solely related to her belief that, by citing a Board member’s name on the roll call as the basis for his ensuing comments, Complainant exceeded the permissible scope of “the first Public Forum.” Respondent’s statements did not address, in any way, the allegations that Complainant made about her during his public comments, and instead strictly related to how “the first Public Forum” would be, and would not be, conducted moving forward. As a result, the Commission finds that the alleged violation of *N.J.S.A.* 18A:12-24.1(j) should be dismissed.

Accordingly, and granting all inferences in favor of the non-moving party (Complainant), the Commission finds that the allegations in the Complaint were timely filed, but *grants* the Motion to Dismiss in its entirety because Complainant failed to plead sufficient, credible facts to support a finding that Respondent violated *N.J.S.A.* 18A:12-24.1(c), *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/or *N.J.S.A.* 18A:12-24.1(j) as asserted in the Complaint.

As a final note, 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. 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). Therefore, to the extent that Complainant seeks a determination from the Commission that Respondent made “100% false” statements about Complainant and/or his comments, or that she “discredited” or “embarrassed him” during the public session of a Board meeting, the Commission notes that such determinations fall outside the scope, authority, and jurisdiction of the Commission. Nonetheless, if Complainant can establish that the comments made by Respondent were false and/or derogatory and “tarnished” his reputation or otherwise caused him demonstrable harm, he may be able to pursue a claim, e.g., defamation, in the appropriate venue.

IV. Request for Sanctions

At its meeting on July 21, 2020, the Commission considered Respondent’s request that the Commission find the Complaint frivolous, and impose sanctions pursuant to *N.J.S.A.*

18A:12-29(e). Despite Respondent's argument, the Commission cannot find evidence that might show that Complainant filed the Complaint in bad faith or solely for the purpose of harassment, delay, or malicious injury. The Commission also does not have information to suggest that Complainant knew or should have known that the Complaint was without any reasonable basis in law or equity, or that it could not be supported by a good faith argument for an extension, modification or reversal of existing law. *N.J.A.C.* 6A:28-1.2. Therefore, at its meeting on August 25, 2020, the Commission voted to find the Complaint not frivolous, and to deny the request for sanctions.

Although the Commission does not find that the Complaint filed here was frivolous, it feels compelled to caution Complainant that this is the second Complaint filed against Respondent that has been dismissed because of failure to plead sufficient, credible facts. While there is nothing that prohibits Complainant from filing future complaints, he must be more conscious of the evidence needed to establish a violation of the Act.

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 find that the allegations in the Complaint were timely filed, but to **grant** the Motion to Dismiss in its entirety because Complainant failed to plead sufficient, credible facts to support a finding that Respondent violated *N.J.S.A.* 18A:12-24.1(c), *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/or *N.J.S.A.* 18A:12-24.1(j) as contended in the Complaint. The Commission also voted to find that the Complaint is not frivolous, and to deny Respondent's request for sanctions.

Pursuant to *N.J.S.A.* 18A:12-29(b), the Commission hereby notifies Complainant and Respondent that, for the reasons set forth above, this matter is dismissed. This decision is a final decision of an administrative agency and, therefore, it is appealable only to the Superior Court-Appellate Division. *See, New Jersey Court Rule 2:2-3(a).*

Robert W. Bender, Chairperson

Mailing Date: August 25, 2020

***Resolution Adopting Decision
in Connection with C15-20***

Whereas, at its meeting on July 21, 2020, 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 21, 2020, the Commission discussed finding that the allegations in the Complaint were timely filed, but granting the Motion to Dismiss in its entirety for failure to plead sufficient, credible facts to support the allegations that Respondent violated *N.J.S.A. 18A:12-24.1(c)*, *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/or *N.J.S.A. 18A:12-24.1(j)* as alleged in the Complaint; and

Whereas, at its meeting on July 21, 2020, the Commission discussed finding the Complaint not frivolous, and denying Respondent's request for sanctions; and

Whereas, at its meeting on August 25, 2020, the Commission reviewed and voted to approve the within decision as accurately memorializing its actions/findings from its meeting on July 21, 2020; 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 certify that this Resolution was duly adopted by the School Ethics Commission at its public meeting on August 25, 2020.

Kathryn A. Whalen, Director
School Ethics Commission