

***Before the School Ethics Commission
Docket No.: C12-19
Decision on Motion to Dismiss***

**Craig Marshall,
Complainant**

v.

**Michael Ballone,
Marlboro Township Public Schools District, Monmouth County,
Respondent**

I. Procedural History

This matter arises from a Complaint that was filed on March 4, 2019, by Craig Marshall (Complainant), a former member of the Marlboro Township Board of Education (Board), alleging that Michael Ballone (Respondent), an administrator employed by the 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(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(d) in Count 1, violated *N.J.S.A.* 18A:12-24(f) in Count 2, and violated *N.J.S.A.* 18A:12-24(c) in Count 3.

On March 7, 2019, the Complaint was served on Respondent, via regular and certified mail, notifying him that charges were filed against him with the School Ethics Commission (Commission), and advising that he had twenty (20) days to file a responsive pleading. On April 26, 2019, and after receiving an extension, Respondent filed a Motion to Dismiss in Lieu of Answer (Motion to Dismiss), and also alleged that the Complaint is frivolous.¹ On June 5, 2019, Complainant filed a response to the Motion to Dismiss and allegation of frivolous filing.

The parties were notified by correspondence dated June 11, 2019, that this matter would be placed on the Commission's agenda for its special meeting on June 19, 2019, in order to make a determination regarding the Motion to Dismiss and allegation of frivolous filing. At its special meeting on June 19, 2019, the Commission considered the filings in this matter and, at its meeting on July 23, 2019, the Commission voted to find that the Complaint was 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(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(d) as alleged in Count 1, violated *N.J.S.A.* 18A:12-24(f) as argued in Count 2, and/or violated *N.J.S.A.* 18A:12-24(c) as contended

¹ The Respondent in this matter is represented by the same counsel as the Respondent in a separate but related matter (C13-19). Therefore, counsel filed one Motion to Dismiss and allegation of frivolous filing in connection with both matters.

in Count 3. 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, Complainant states that Respondent, the Director of Curriculum and Instruction for the Marlboro Township School District (District), is business partners with two other District administrators, namely Adam Lindstrom (Supervisor of Instructional Technology) and Eric Hibbs (the Chief School Administrator (CSA)), in an educational consulting firm, AME Educational Consultants (AME). According to Complainant, AME is the acronym for Adam (Lindstrom), Michael (Ballone) and Eric (Hibbs). Complainant further states that Mr. Hibbs supervises Respondent, and Respondent supervises Mr. Lindstrom.

With the above in mind, in Count 1 of the Complaint, Complainant asserts that Respondent and his partners (Mr. Lindstrom and CSA Hibbs) solicited, networked with, and contacted other school districts and administrators through, but not limited to, personal and professional relationships, meetings, seminars and conferences, in order to obtain clients for their business (AME). Therefore, Complainant argues that Respondent violated *N.J.S.A.* 18A:12-24(a), 18A:12-24(b), 18A:12-24(c), and 18A:12-24(d).

In Count 2, Complainant asserts that Respondent and AME were hired by various public school districts (including the Hazlet School District, North Bergen School District, and Pine Hill School District) to provide "IDEA Teacher Training, Best Practices in Assessments," and a number of other subjects. At the Board meeting on November 18, 2018, CSA Hibbs (and partner in AME), stated that AME provided "Data Analysis" to their clients. Respondent, as the Director of Curriculum, is responsible for providing said "Data Analysis" to his supervisors, and data is obtained "through the performance of his duties as Director of Curriculum." According to Complainant, "it is clear that the information, and or processes, matrixes, rubrics, etc. presented to the clients of [Respondent's] business was obtained while [R]espondent was in the employ of the [District] and this information is considered intellectual property of the [District]."

Complainant further asserts that Respondent along with other "high ranking" District employees, attended classes and received "Google Certification," which included "Google Classroom," as well as other Google applications. In addition, Respondent was paid his regular salary during the training, and training fees were paid by the District. However, Complainant contends that the AME Invoice #20180515 (5-15-2018) and Hazlet Purchase Order #19-02668 (8-1-2018), "clearly state that the [R]espondent and his business (AME) provided 'Google Certification Training,' in which they utilized the knowledge, skills and special information, etc. obtained by his employer," namely the District. Based on the above, Complainant asserts that Respondent violated *N.J.S.A.* 18A:12-24(f) in Count 2.

In Count 3, Complainant asserts that during the 2017 school year, CSA Hibbs initiated a process to have his contract "revised, extended, modified, etc.," including a salary increase and merit pay bonus, two years prior to the contract's expiration. In response to this request, a public

hearing was scheduled. At this hearing, at which the public is welcome to offer comments, Respondent and Mr. Lindstrom offered their opinions and offered “glowing recommendations” of CSA Hibbs, urging the public to “grant him a ‘new’ contract, with a substantial raise.” According to Complainant, while at the public hearing, Respondent did not identify himself as a District official, and did not disclose that he was a business partner of CSA Hibbs.

Complainant further asserts that CSA Hibbs is in the direct line of supervision of Respondent, and is the only person who has authority to review evaluations, recommend promotions, renew contracts, provide salary increases, and provide continued employment of Respondent. Furthermore, Respondent never disclosed that he had a business relationship with CSA Hibbs (and Mr. Lindstrom) and, therefore, violated *N.J.S.A. 18A:12-24(c)*.

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

Following receipt of the Complaint, Respondent filed a **Motion to Dismiss**, and also alleged the Complaint is frivolous. Respondent argues that all charges against him “stem from [his] co-ownership of AME,” which Complainant claims he was unaware of until he learned about it on social media “on or about October 1, 2018.” However, Respondent maintains that the 180-day filing period actually began tolling no later than April 18, 2018, which was the date Respondent’s Personal/Relative and Financial Disclosure Statements (Disclosure Statements) and the information regarding his business, AME, became public. Respondent further argues that even if Complainant did not have a reason to “check” the Disclosure Statements until April 30, 2018, the 180-day limitations period still would have expired on October 29, 2018, which was four (4) months beyond Complainant’s filing date. Respondent asserts that Complainant’s exercise of due diligence should have uncovered Respondent’s business relationship earlier than October 2018, and, therefore, the Complaint should be dismissed as **untimely**.

Respondent maintains that if the Commission does not dismiss the Complaint due to untimeliness, then the Complaint should be dismissed because it is “meritless on its face.” In response to Count 1, Respondent argues that, “[t]he first two charges against [Respondent] are substantially the same as the corresponding charges against [CSA] Hibbs, and should be dismissed for the same reasons.”²

Regarding Count 2, Respondent denies Complainant’s claim that “substantial information, and/or various processes, matrixes, rubrics, etc.” were provided to clients by Respondent through his company, AME, and that those tools were obtained and developed through Respondent’s employment with the District. Respondent maintains that AME did not use any of the “tools” Complainant refers to, and the Google training is available to anyone for free. Furthermore, Respondent obtained “Level 2 Google certification” on his own time and paid for it himself; moreover, the District did not receive an invoice for the event. Respondent asserts that Complainant provided false information, and the allegation that he violated *N.J.S.A. 18A:12-24(f)* should be dismissed.

² Although the second charge against Respondent is the same as that filed against CSA Hibbs, the first charge against Respondent is unrelated to that filed against CSA Hibbs. Therefore, the Commission was unable to rely on any argument from Respondent as to this allegation.

In response to Count 3, Respondent first points out that the referenced Board meeting took place on October 3, 2017, not on October 2, 2017, as Complainant alleges. According to Respondent, Board policy requires that “speakers provide their name and place of residence to the presiding officer,” which Respondent did. It was not necessary for him to provide any personal/business related information about himself, such as he was in a business relationship with CSA Hibbs. Respondent argues that it was his First Amendment right to speak at a public meeting, and express his views on the matter being discussed (the CSA’s contract). Furthermore, Respondent’s “status as the [CSA’s] subordinate” was apparent to everyone who attended the meeting, and the public could interpret his remarks as they wished. It is not unethical for a school administrator to speak on behalf of his supervisor in a public forum and, therefore, the allegation that Respondent violated *N.J.S.A. 18A:12-24(c)* should be dismissed.

Finally, Respondent argues that the Complaint was filed on “nothing more than a hunch,” and included a “wide range” of allegations without any proof to support them. Complainant has a “track record of unsupported criticism” against the District’s administration and, therefore, the Complaint is frivolous, and sanctions should be imposed.

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

In response to the Motion to Dismiss and allegation of frivolous filing, Complainant contends that while he was aware the Disclosure Statements existed, there was no reason for him to review their content without believing that there was “an inkling of wrongdoing” on the part of the administrators. Complainant asserts that he was not aware of the business relationship until a community member “uncovered” the information while researching another matter. Complainant argues that “it is absurd to think” that a Board member would search the Disclosure Statements in order to find information that could be used against an administrator. According to Complainant, the allegation of untimeliness should be dismissed because the time began to toll when the community member brought the matter to the public’s attention on social media.

Complainant reaffirms that Respondent received full compensation from the District for his Google Certification. Although Respondent’s exhibits indicate the payment was made by personal credit card, the Business Administrator and the CSA have access to “petty cash” accounts that are used to reimburse such expenses, and those records are not available to the public. Complainant asserts that Respondent did not offer any proof that the course work was done on his “own time” and, in fact, at a Board meeting, CSA Hibbs “boasted” how difficult it was and how many hours he and Respondent spent at “their respective desks taking the exams,” which is “clearly” during District time. Complainant offers that Google provides a time stamp noting when the “student” logged on and took the exam, which Respondent did not provide as proof.

Complainant also reaffirms that the October Board meeting was “highly contentious” due to the potential “premature new contract” with a “significant monetary increase” and Respondent showed his support for his “business partner.” Complainant maintains that at the time of this meeting, Respondent did not identify nor was the public aware of his business relationship with CSA Hibbs. Complainant asserts that “advocating for a business partner” violates the Act.

Finally, Complainant argues that Respondent's characterization of Complainant "exercising" his "statutory and moral obligations" as a "track record of unsupported criticism of District Administrators" is "absurd," and Respondent has not presented any evidence that the Complaint is frivolous.

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(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(d)* as alleged in Count 1, violated *N.J.S.A. 18A:12-24(f)* as argued in Count 2, and/or violated *N.J.S.A. 18A:12-24(c)* as contended in Count 3.

B. *Alleged Untimeliness*

In his Motion to Dismiss, Respondent argues that the allegations in the Complaint, all of which relate to his business interest in AME, are untimely and, therefore, should be dismissed. More specifically, Respondent argues that Respondent's business interest in AME became public on February 6, 2018, which is the date his Disclosure Statements were posted on the Commission's website. Because Complainant - a former Board member who was well aware of the requirement to file Disclosure Statements, as well as the deadline for filing same - did not file his Complaint until March 4, 2019, which was beyond the 180-day statute of limitations, the Complaint should be dismissed. Complainant counters that he did not learn of Respondent's business interest in AME until a social media post on October 1, 2018, and a community member's comments at a Board meeting; therefore, Complainant submits that his Complaint was timely filed.

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, the Commission finds that Complainant knew of the events that form the basis of his Complaint on October 1, 2018, which is the date he learned of Respondent's business interest in AME following a post of social media.

Although Respondent's Disclosure Statements were publicly available as of February 6, 2018, the suggestion by Respondent that Complainant should have been aware of the contents of the Disclosure Statements at that time, i.e., February 6, 2018, is not compelling. Even if Complainant had reviewed Respondent's Disclosure Statements, he still would not have realized the relationship between Respondent, Mr. Lindstrom, **and** CSA Hibbs unless he had reason to search *all* of their Disclosure Statements. In addition, absent knowledge of the business relationship between Respondent, Mr. Lindstrom, and CSA Hibbs, Complainant could not have known that the actions complained of, *at the time they occurred*, could serve as the basis for alleged violations of the Act. In other words, Complainant's knowledge of the business relationship between Respondent, Mr. Lindstrom, and CSA Hibbs would not have necessarily led to the filing of a Complaint upon reviewing the Disclosure Statements. Instead, it is the specific acts and conduct engaged in by Respondent that Complainant feels are violative of the Act, and are violative of the Act *because of* the business relationship between Respondent, Mr. Lindstrom, and CSA Hibbs.

With the above in mind, and because Complainant did not become aware of the business relationship between Respondent, Mr. Lindstrom, and CSA Hibbs until October 1, 2018, and his Complaint was filed on March 4, 2019, it was timely filed within the period of limitations.

C. *Allegations of Prohibited Acts*

In the Complaint, Complainant alleges 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(d) in Count 1, violated *N.J.S.A.* 18A:12-24(f) in Count 2, and violated *N.J.S.A.* 18A:12-24(c) in Count 3. These provisions of the Act provide:

- 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;

d. No school official shall undertake any employment or service, whether compensated or not, which might reasonably be expected to prejudice his independence of judgment in the exercise of his official duties;

f. No school official shall use, or allow to be used, his public office or employment, or any information, not generally available to the members of the public, which he receives or acquires in the course of and by reason of his office or employment, for the purpose of securing financial gain for himself, any member of his immediate family, or any business organization with which he is associated;

1. Count 1

In Count 1, Complainant alleges that Respondent, the Director of Curriculum and Instruction for the District, and his AME business partners (Mr. Lindstrom and CSA Hibbs), “solicited, networked and ... otherwise made contact with other school districts and administrators through, although not limited to, personal and professional relationships, meetings, seminars, conferences etc. in order to obtain clients for their consulting business.” Therefore, Complainant argues 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(d)*. As indicated above, Respondent’s Motion to Dismiss did not offer specific facts in support of his argument that this Count should be dismissed.

To credit the alleged violation of *N.J.S.A. 18A:12-24(a)*, the Commission must find evidence that Respondent, or a member of his immediate family, has an interest in a business organization, or engaged in any business, transaction, or professional activity which was in substantial conflict with the proper discharge of his duties in the public interest.

After review of Complainant’s allegations, the Commission finds that even if the facts as alleged in the Complaint are proven true by sufficient credible evidence, they would not support a finding that Respondent violated *N.J.S.A. 18A:12-24(a)*. Although Complainant has identified Respondent’s business interest in AME (and its connection to other District administrators), he has not articulated, with any factual specificity, how his interest (and/or the business itself), even if related to education, is in “substantial conflict” with the proper discharge of his duties in the public interest. In this regard, the Complaint does not indicate, with any specificity, the date/time that Respondent engaged in the alleged acts, the place where the acts purportedly occurred, the specific conduct that Respondent allegedly engaged in, or the identity of the people (or the entities) ostensibly involved in the conduct. Instead, and based on nothing more than the existence of the business relationship between Respondent, Mr. Lindstrom, and CSA Hibbs, Complainant blanketly concludes that Respondent along with his business partners (Mr. Lindstrom and CSA Hibbs) engaged in conduct violative of the Act. Therefore, the Commission finds that the alleged violation of *N.J.S.A. 18A:12-24(a)* in Count 1 should be dismissed.

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

Based on its review of Complainant’s allegations, the Commission finds that even if the facts as alleged in the Complaint are proven true by sufficient credible evidence, they would not support a finding that Respondent violated *N.J.S.A. 18A:12-24(b)*. Absent the articulation of specific facts demonstrating how, when, where, and with whom Respondent used his official position as the Director of Curriculum and Instruction for the District to secure an unwarranted privilege, advantage or employment for himself and/or AME, a violation of *N.J.S.A. 18A:12-24(b)* cannot be substantiated. Therefore, the Commission finds that the alleged violation of *N.J.S.A. 18A:12-24(b)* in Count 1 should be dismissed.

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

After review of Complainant’s allegations, the Commission finds that even if the facts as alleged in the Complaint are proven true by sufficient credible evidence, they would not support a finding that Respondent violated *N.J.S.A. 18A:12-24(c)*. Once again, Complainant has not identified any specific instance, e.g., date, time, place, etc., when Respondent acted in his official capacity - as the Director of Curriculum and Instruction for the District - in a matter in which he and/or AME had a direct or indirect financial involvement, or in a matter where he had a personal involvement that created some benefit to him and/or AME. Instead, the Complaint seems to conclude, without sufficient supporting facts, that because Respondent’s business is educationally related, he must have exploited his position in the District to obtain clients and/or business for AME. However, the Commission is constrained by the limited facts that appear in the Complaint, and absent any facts to support Complainant’s conclusions/assumptions, the Commission finds that the alleged violation of *N.J.S.A. 18A:12-24(c)* in Count 1 should be dismissed.

In order to credit the alleged violation of *N.J.S.A. 18A:12-24(d)*, the Commission must find evidence that Respondent engaged in employment or service, regardless of whether compensated, which might reasonably be expected to prejudice his independence of judgment in the exercise of his official duties.

Based on its review of Complainant’s allegations, the Commission finds that even if the facts as alleged in the Complaint are proven true by sufficient credible evidence, they would not support a finding that Respondent violated *N.J.S.A. 18A:12-24(d)*. As with the alleged violation of *N.J.S.A. 18A:12-24(a)*, Complainant has not provided specific facts demonstrating how Respondent’s interest in AME might reasonably be expected to prejudice his independence of judgment in the exercise of his official duties as the Director of Curriculum and Instruction for

the District. To prevail in establishing a violation, Complainant needed to offer sufficient facts in support of his position. Absent the articulation of such facts, the Commission finds that the alleged violation of *N.J.S.A.* 18A:12-24(d) in Count 1 should be dismissed.

2. Count 2

In Count 2, Complainant argues that, in violation of *N.J.S.A.* 18A:12-24(f), Respondent and his business partners provided “data analysis” to their school district clients, and that “the information, and or processes, matrixes, rubrics, etc. presented” to AME’s clients (other school districts) were obtained while Respondent was employed by the District. In addition, Respondent and other District administrators (Mr. Lindstrom and CSA Hibbs) received training and instruction that was paid for by the District, and then turnkeyed this information to AME’s clients.

Respondent denies Complainant’s claim that “substantial information, and/or various processes, matrixes, rubrics, etc.” were provided to clients by Respondent through his company, AME, and denies that the tools utilized were obtained and developed through Respondent’s employment with the District. Respondent further counters that he did not use any of the “tools” Complainant refers to, and that the Google training is available to anyone for free. Furthermore, Respondent obtained “Level 2 Google certification” on his own time, and paid for it himself (not by or through District funds).

To credit the alleged violation of *N.J.S.A.* 18A:12-24(f), the Commission must find evidence that Respondent used his public employment, or any information not generally available to the public, and which he received in the course of and by reason of his employment, for the purpose of securing financial gain for himself, his business organization, or a member of his immediate family.

Based on its review of Complainant’s allegations, the Commission finds that even if the facts as alleged in the Complaint are proven true by sufficient credible evidence, they would not support a finding that Respondent violated *N.J.S.A.* 18A:12-24(f). The Commission finds that, once again, Complainant seems to conclude that Respondent used his employment (or information not generally available to the public which was received in the course of his employment) to secure financial gain for himself and/or AME, but does not provide sufficient facts to support this contention. Reliance on vouchers and purchase orders which do not provide, with any degree of detail, the specific kind of information or training provided to AME’s clients nor do the vouchers and purchase orders make it clear whether the information or training was actually related to Respondent’s employment and/or was not generally available to the public, is insufficient. Therefore, the Commission finds that the alleged violation of *N.J.S.A.* 18A:12-24(f) in Count 2 should be dismissed.

3. Count 3

In Count 3, Complainant contends that, at a public hearing regarding a possible revision, extension, or modification of CSA Hibbs’ employment contract, Respondent offered a “glowing recommendation” of CSA Hibbs, but did not identify himself as a District official, and did not

disclose that he was a business partner of CSA Hibbs. As a result, and because CSA Hibbs also directly supervises Respondent (and makes recommendations regarding his employment), Complainant argues that Respondent violated *N.J.S.A.* 18A:12-24(c).

Respondent counters that Board policy did not require him to provide any personal/business related information about himself, such as he was in a business relationship with CSA Hibbs, and that it was his First Amendment right to speak at a public meeting, and express his views on the matter being discussed (the CSA's contract). He also notes that his "status as the [CSA's] subordinate" was apparent to everyone who attended the meeting, and that it is not unethical for a school administrator to speak on behalf of his supervisor in a public forum.

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

After review of Complainant's allegations, the Commission finds that even if the facts as alleged in the Complaint are proven true by sufficient credible evidence, they would not support a finding that Respondent violated *N.J.S.A.* 18A:12-24(c). The basis for the alleged violation of *N.J.S.A.* 18A:12-24(c) in Count 3 is that Respondent failed to disclose, while speaking in support of a new employment contract for CSA Hibbs, at a public meeting, that (1) he was a school official in the District **and** (2) he was business partners with CSA Hibbs.

As an initial matter, the Commission notes that the Board meeting at issue occurred "[d]uring the 2017 school year." However, a review of CSA Hibbs' Disclosure Statements indicates that he did not disclose his business interest in AME until he filed his Disclosure Statements in 2018. Although the "Financial" Disclosure Statement relates to the previous year's (2017) financial information, it is not clear, based on the record, whether CSA Hibbs actually had a business interest in AME at the time the Board meeting occurred, and Respondent offered his statements in support of CSA Hibbs' employment contract.

In addition, the Commission notes that it is unclear, based on the facts set forth in the Complaint, whether Respondent was speaking in his official capacity as the Director of Curriculum and Instruction for the District, or in his capacity as a private tax-paying citizen who resides in the District. Even if Respondent was speaking in his official capacity as the Director of Curriculum and Instruction, and even if CSA Hibbs did have an interest in AME at that time, Complainant has not provided sufficient facts to establish how Respondent's public comments in support of CSA Hibbs would result in a financial windfall to him (Respondent) in connection with AME and/or with his employment in the District. Even if not advisable for Respondent to be in business with CSA Hibbs, the Complaint does not provide facts establishing *how (or if)* the employment/supervisory relationship between Respondent and CSA Hibbs relates to or impacts their outside employment/business, or Respondent's employment in the District.

Without sufficient facts to establish that CSA Hibbs was involved in AME at the time the Board meeting occurred, and without sufficient facts to establish that the continued employment of CSA Hibbs, or a “substantial” increase in his salary, would have a concomitant financial impact (direct or indirect) on Respondent’s business with CSA Hibbs (AME), the Commission finds that the alleged violation of *N.J.S.A.* 18A:12-24(c) in Count 3 should be dismissed.

Accordingly, and granting all inferences in favor of the non-moving party (Complainant), the Commission has determined 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(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(d) as alleged in Count 1, violated *N.J.S.A.* 18A:12-24(f) as argued in Count 2, and/or violated *N.J.S.A.* 18A:12-24(c) as contended in Count 3.

IV. Request for Sanctions

At its special meeting on June 19, 2019, 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 July 23, 2019, the Commission voted to find the Complaint not frivolous, and to deny the request for sanctions.

V. Decision

Based on the foregoing, and in reviewing the facts in the light most favorable to the non-moving party (Complainant), the Commission voted to find that the Complaint was 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(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(d) as alleged in Count 1, violated *N.J.S.A.* 18A:12-24(f) as argued in Count 2, and/or violated *N.J.S.A.* 18A:12-24(c) as contended in Count 3. 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: July 24, 2019

***Resolution Adopting Decision
in Connection with C12-19***

Whereas, at its special meeting on June 19, 2019, 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 special meeting on June 19, 2019, the Commission discussed finding that the Complaint was timely filed; and

Whereas, at its special meeting on June 19, 2019, the Commission discussed 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(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(d) as alleged in Count 1, violated *N.J.S.A.* 18A:12-24(f) as argued in Count 2, and/or violated *N.J.S.A.* 18A:12-24(c) as contended in Count 3; and

Whereas, at its special meeting on June 19, 2019, the Commission discussed finding the Complaint not frivolous, and denying Respondent's request for sanctions; and

Whereas, at its meeting on July 23, 2019, the Commission reviewed and voted to approve the within decision as accurately memorializing its actions/findings from its special meeting on June 19, 2019; 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 July 23, 2019.

Kathryn A. Whalen, Director
School Ethics Commission