

Before the School Ethics Commission
Docket No.: C46-19
Decision on Motion to Dismiss

**Maria Emma Anderson,
*Complainant***

v.

**Mohammed Hussain, Daysi Gonzalez, Niaz Nadim, and Esslam Zakaria,
Prospect Park Board of Education, Passaic County,
*Respondents***

I. Procedural History

This matter arises from a Complaint that was filed on June 25, 2019, by Maria Emma Anderson (Complainant), alleging that Mohammed Hussain (Respondent Hussain), Daysi Gonzalez (Respondent Gonzalez), Niaz Nadim (Respondent Nadim), and Esslam Zakaria (Respondent Zakaria) (collectively referred to as Respondents), members of the Prospect Park 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 Respondents violated *N.J.S.A.* 18A:12-24.1(a), *N.J.S.A.* 18A:12-24.1(d), *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) in Count 1; violated *N.J.S.A.* 18A:12-24.1(d), *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(i), and *N.J.S.A.* 18A:12-24.1(j) in Count 2; and violated *N.J.S.A.* 18A:12-24.1(d), *N.J.S.A.* 18A:12-24.1(i), and *N.J.S.A.* 18A:12-24.1(j) in Count 3.

On June 26, 2019, the Complaint was served on Respondents, via regular and certified mail, notifying them that charges were filed against them with the School Ethics Commission (Commission), and advising that they had twenty (20) days to file a responsive pleading. On August 12, 2019, Respondents filed a Motion to Dismiss in Lieu of Answer (Motion to Dismiss), and also alleged that the Complaint is frivolous. On September 4, 2019, Complainant filed a response to the Motion to Dismiss and allegation of frivolous filing, and subsequently filed an “Addenda” to her filing on September 5, 2019.

The parties were notified by correspondence dated September 16, 2019, that this matter would be placed on the Commission’s agenda for its meeting on September 24, 2019, in order to make a determination regarding the Motion to Dismiss and allegation of frivolous filing. At its meeting on September 24, 2019, the Commission considered the filings in this matter and, at its meeting on October 25, 2019, the Commission voted to grant the Motion to Dismiss in its entirety because Complainant failed to plead sufficient, credible facts to support a finding that Respondents violated *N.J.S.A.* 18A:12-24.1(a), *N.J.S.A.* 18A:12-24.1(d), *N.J.S.A.* 18A:12-24.1(i), and *N.J.S.A.* 18A:12-24.1(j) as alleged in Count 1, violated *N.J.S.A.* 18A:12-24.1(d), *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(i), and *N.J.S.A.* 18A:12-24.1(j) as argued in Count 2, and/or violated *N.J.S.A.* 18A:12-24.1(d), *N.J.S.A.* 18A:12-24.1(i), and *N.J.S.A.* 18A:12-24.1(j) as contended in Count 3. The Commission also voted to find the Complaint not frivolous, and to deny Respondents' request for sanctions.

II. Summary of the Pleadings

A. *The Complaint*

In Count 1, Complainant states that Respondent Nadim failed to “bring desired changes through legal and ethical procedures, and ignored the recommendation of the Chief Administrative Officer (CAO) to appoint [a] Vice Principal...for the 2019-2020 school years.” In addition, Respondent Hussain, Respondent Gonzalez, and Respondent Zakaria “voted not to appoint the tenured Vice Principal, and disregarded the CAO’s judgment, not supporting and protecting school personnel in the proper performance of their duties.” Based on these facts, Complainant alleges that Respondent Nadim “as the sponsor,” and Respondents Hussain, Gonzalez, and Zakaria “as the supporters,” violated: *N.J.S.A.* 18A:12-24.1(a) because they “failed to bring desired changes through legal and ethical procedures”; *N.J.S.A.* 18A:12-24.1(d) because they “tried to manage the school in its daily operations”; *N.J.S.A.* 18A:12-24.1(i) because they “did not ‘support and protect school personnel in proper performance of their duties,’” namely the CAO and the Vice Principal; and *N.J.S.A.* 18A:12-24.1(j) because none of the Respondents “elevated any complaints about the performance or any other issue with the Vice Principal prior to discussing the matter in an open public meeting.”

In Count 2, Complainant states that Respondents ignored the CAO’s recommendation to reappoint a Security Resource Officer (SRO) for the 2019-2020 school year. In addition, Respondent Zakaria – a police officer – “failed to hold confidential personnel matters by publicly praising his fellow local police officer, who is also a [SRO] shared by the town and paid by the school, while deriding [the] SRO [who was not reappointed] as an ‘outsider,’ ‘out of townner,’ implying he doesn’t know his job.” Based on these facts, Complainant argues that Respondents violated: *N.J.S.A.* 18A:12-24.1(d) because, by ignoring the CAO’s recommendation, Respondents are “administering the daily functioning of the school and effecting the safety and wellbeing of students and teachers”; *N.J.S.A.* 18A:12-24.1(i) because Respondents did not “support and protect school personnel in proper performance of their duties,” namely the CAO whose recommendation it was to reappoint the SRO; *N.J.S.A.* 18A:12-24.1(f) because Respondent Zakaria, “as the sponsor,” and Respondents Hussain, Gonzalez, and Nadim “as the supporters,” “surrendered their independent judgment as to the safety and wellbeing of students, to use the school for gain of friends, namely the town [p]olice [o]fficer who is also a [SRO], by removing anyone whose performance he can be compared against and evaluated”; *N.J.S.A.* 18A:12-24.1(g) because Respondent Zakaria, “as the sponsor,” and Respondents Hussain, Gonzalez, and Nadim “as the supporters,” “failed to hold confidential all matter[s] pertaining to the schools, by debating in an open meeting the performance of the town police officer, and the [SRO] whose non-renewal reasons were discussed without his presence during the public meeting”; and *N.J.S.A.* 18A:12-24.1(j) because none of the Respondents “elevated any complaints about the performance or any other issue with the SRO prior to discussing the matter in an open public meeting.”

In Count 3, Complainant states that Respondents ignored the CAO's recommendation to hire two custodians, and did so "without having any prior complaints on their performance." Based on these facts, Complainant asserts that Respondents violated *N.J.S.A.* 18A:12-24.1(d) because they are "interfering with the daily operation of the school"; *N.J.S.A.* 18A:12-24.1(i) because they did not "support and protect [the CAO and the custodians] in proper performance of their duties"; and *N.J.S.A.* 18A:12-24.1(j) because none of the Respondents "elevated any complaints about the performance or any other issue with the custodians prior to discussing the matter in an open public meeting."

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

Following receipt of the Complaint, Respondents filed a Motion to Dismiss and allegation of frivolous filing. As an initial matter, Respondents note that, contrary to Complainant's assertion, they did not vote "no" on the appointment of the Vice Principal at the June 18, 2019, meeting (Count 1). Instead, the minutes from that meeting "reflect the Vice Principal appointment vote was tabled" and, therefore, there was no vote. As a result, the Complaint "is based on a false statement of fact, necessitating dismissal." In addition, and as reflected in the Board's minutes, Respondent Zakaria actually voted "yes" on the appointments of the custodial staff.

Notwithstanding the above, Respondents contend that the alleged violation of *N.J.S.A.* 18A:12-24.1(a) in Count 1 should be dismissed because "the Complaint fails to attach a copy of any court or agency decision or order allegedly violated, as required by *N.J.A.C.* 6A:28-6.4(a)(1) (because no such document exists)." Even if such a document exists, liability for a violation thereof would fall on the Board as a whole, not on any individual members.

As for the alleged violations of *N.J.S.A.* 18A:12-24.1(d) in Counts 1-3, Respondents argue that "the Complaint and its attachments are devoid of any facts identifying any direct order given by Respondents to school personnel, or identifying any day-to-day administrative functions performed by Respondents." Respondents' "no" vote on certain personnel appointments is a Board function, and not a function of the day-to-day administration of the district. In this regard, Board members have the right to vote on personnel and other Board matters as they see fit, and the mere act of voting cannot constitute the basis for a violation of the Act.

Regarding the alleged violation of *N.J.S.A.* 18A:12-24.1(f) in Count 2, Respondents argue that "the Complaint is devoid of any facts identifying any action taken on behalf of, or at the request of, any special interest or political group, or identifying any benefit acquired by Respondents or their family/friends." Instead, Complainant's broad allegation that Respondents surrendered their independent judgment does not have any "actual supporting facts."

As for the alleged violation of *N.J.S.A.* 18A:12-24.1(g) in Count 2, Respondents argue that "the Complaint is devoid of any facts identifying any confidential or inaccurate information or any disclosure of same," and the alleged debate regarding the SRO is not reflected in the Board's minutes.

Regarding the alleged violations of *N.J.S.A.* 18A:12-24.1(i) in Counts 1-3, Respondents argue “the Complaint is devoid of facts identifying any actions which undermined, compromised, or harmed school personnel in the proper performance of their duties.” The fact that Respondents voted “no” on personnel and other Board matters is within their prerogative as Board members, and the “mere act of voting contrary to others’ opinions does not constitute a basis for an alleged violation of the Act.”

As for the alleged violations of *N.J.S.A.* 18A:12-24.1(j) in Counts 1-3, Respondents argue “the Complaint and its attachments are devoid of any facts identifying any complaint, or any action undertaken by Respondents to investigate or resolve a complaint.”

Finally, Respondents assert that the Complaint is frivolous because Complainant (a former Board member) knew, or should have known, that her Complaint was without reasonable basis and was made in bad faith. This is Complainant’s fourth action against Respondents and having “received Respondents’ pending motions to dismiss the three previous complaints,” Complainant should know by now that she needs to provide factual support for her “broad allegations.” Respondents further assert Complainant has a “personal gripe” against the Board, and is “abus[ing] the system.” Respondents request that the Commission find the Complaint frivolous, and impose sanctions.

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

In response to the Motion to Dismiss and allegation of frivolous filing, Complainant reaffirms her allegations. Regarding Count 1 (and the appointment of the Vice Principal), Complainant agrees that the decision to vote was tabled at the June 18, 2019, meeting, but was revisited at the meeting on August 13, 2019. At the latter, Respondents again discussed his performance in public “displaying a lack of empathy, respect and ethics and violating confidentiality again and again.” Complainant asserts Respondents “again tabled” the matter until they could “come up with a way to twist and turn the tenure law, or an accusation of some sort.” Regarding a violation of *N.J.S.A.* 18A:12-24.1(a) Complainant defends “the intent is there, and so is the purposeful determination.”

As to a violation of *N.J.S.A.* 18A:12-24.1(f), Complainant asserts “the mayor sponsored and controled [sic] the campaigns of [Respondents]” and the “mayor is also under pressure to do something to lower the taxes of the town....” Furthermore, Respondent Zakaria, as a police officer and member of the police union, is conflicted with matters related to fellow police officers and “criticizing retired policeman acting as school security guard.” In addition, Board member Nadim’s spouse is a full-time administrative assistance at the municipality and both Respondent Zakaria and Respondent Nadim voted on August 13, 2019, for the amended municipal agreement. Complainant argues that “eliminating the Vice Principal, letting go the [SRO] and not appointing custodial personnel, regardless of safety, supervision and proper maintenance of the school cannot be explained but as an undue and a constant force exerted by external influences.”

As to a violation of *N.J.S.A.* 18A:12-24.1(g), Complainant argues “divulging information and giving opinions about the Vice Principal and the [SRO] during an open public meeting directly contradicts the spirit of the first part of *N.J.S.A.* 18A:12-24.1(g).

Regarding the violations of *N.J.S.A.* 18A:12-24.1(i), Complainant affirms that Respondents have been “consistently undermining school personnel” by discussing the performances of school personnel in public session, terminating employees without cause and constantly opposing and rejecting recommendations.

As to the violations of *N.J.S.A.* 18A:12-24.1(j), Complainant reiterated her assertion that none of the Respondents brought forth a complaint about any of the personnel discussed above, prior to their non-renewal or termination and defends that the minutes do not mention “[Respondent Zakaria’s] public defense of the police officer to the detriment of the terminated [SRO]” because the notes were taken by the incoming BA, “who, by his own admission, is in the training stages of his certification.”

For these reasons, Complainant asserts the Complaint should not be dismissed and further asserts that it is not frivolous. Complainant argues she does not have a “gripe” and “has no dealings of any kind with any of the [R]espondents.”

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 Respondents violated *N.J.S.A.* 18A:12-24.1(a), *N.J.S.A.* 18A:12-24.1(d), *N.J.S.A.* 18A:12-24.1(i), and *N.J.S.A.* 18A:12-24.1(j) as alleged in Count 1, violated *N.J.S.A.* 18A:12-24.1(d), *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(i), and *N.J.S.A.* 18A:12-24.1(j) as argued in Count 2, and/or violated *N.J.S.A.* 18A:12-24.1(d), *N.J.S.A.* 18A:12-24.1(i), and *N.J.S.A.* 18A:12-24.1(j) as contended in Count 3.

B. Alleged Code Violations

In the Complaint, Complainant alleges that Respondents violated *N.J.S.A.* 18A:12-24.1(a) in Count 1, violated *N.J.S.A.* 18A:12-24.1(d) in Counts 1-3, violated *N.J.S.A.* 18A:12-24.1(f) in Count 2, violated *N.J.S.A.* 18A:12-24.1(g) in Count 2, violated *N.J.S.A.* 18A:12-24.1(i) in Counts 1-3, and violated *N.J.S.A.* 18A:12-24.1(j) in Counts 1-3. These provisions of the Code provide:

- a. I will uphold and enforce all laws, rules and regulations of the State Board of Education, and court orders pertaining to schools. Desired changes shall be brought about only through legal and ethical procedures.

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.

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.

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.

Alleged Violation of N.J.S.A. 18A:12-24.1(a)
(Count 1)

In Count 1, Complainant asserts that by ignoring the recommendation of the CAO and failing to appoint the Vice Principal for the 2019-2020 school year, Respondent Nadim “as the sponsor,” and Respondents Hussain, Gonzalez, and Zakaria “as the supporters,” violated ***N.J.S.A. 18A:12-24.1(a)*** because they “failed to bring desired changes through legal and ethical procedures.” Respondents **counter** that Complainant “fails to attach a copy of any court or agency decision or order allegedly violated, as required by *N.J.A.C. 6A:28-6.4(a)(1)* (because no such document exists).” Even if such a document exists, liability for a violation thereof would fall on the Board as a whole, not on any individual members.

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 Respondents failed to enforce all laws, rules and regulations of the State Board of Education, and/or court orders pertaining to schools or that Respondents brought about changes through illegal or unethical procedures.

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 Respondents violated *N.J.S.A. 18A:12-24.1(a)*. More specifically, the Commission finds that, despite being required by *N.J.A.C. 6A:28-6.4(a)(1)*, Complainant has not provided **a copy of a final decision(s)** from any court of law or other administrative agency demonstrating that Respondents – either individually or collectively – violated a specific law, rule, or regulation when they “ignored” the recommendation of the CAO and did not vote to appoint the Vice Principal. Absent such a final decision, the Commission finds that there is insufficient credible evidence to

support a finding that Respondents violated *N.J.S.A. 18A:12-24.1(a)*. Therefore, the Commission finds that the alleged violation of *N.J.S.A. 18A:12-24.1(a)* in Count 1 should be dismissed.

Alleged Violations of N.J.S.A. 18A:12-24.1(d)
(Counts 1-3)

In **Count 1**, Complainant alleges that, by ignoring the recommendation of the CAO and failing to appoint the Vice Principal for the 2019-2020 school year, Respondent Nadim “as the sponsor,” and Respondents Hussain, Gonzalez, and Zakaria “as the supporters,” violated *N.J.S.A. 18A:12-24.1(d)* because they “tried to manage the school in its daily operations.”

In **Count 2**, Complainant argues that, by ignoring the CAO’s recommendation to reappoint an SRO for the 2019-2020 school year, Respondents violated *N.J.S.A. 18A:12-24.1(d)* because they administered “the daily functioning of the school” and affected the “safety and wellbeing of students and teachers.”

In **Count 3**, Complainant contends that, by ignoring the CAO’s recommendation to hire two (2) custodians, and doing so “without having any prior complaints on their performance,” Respondents violated *N.J.S.A. 18A:12-24.1(d)* because they interfered “with the daily operation of the school.”

In response to the alleged violations of *N.J.S.A. 18A:12-24.1(d)* in Counts 1-3, Respondents **counter** that “the Complaint and its attachments are devoid of any facts identifying any direct order given by Respondents to school personnel, or identifying any day-to-day administrative functions performed by Respondents.” Respondents’ “no” vote on certain personnel appointments is a Board function, and not a function of the day-to-day administration of the district.

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 Respondents gave a direct order to school personnel or became directly involved in activities or functions that are the responsibility of school personnel or the day-to-day administration of the school district or charter school.

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 Respondents violated *N.J.S.A. 18A:12-24.1(d)* as presented in Counts 1-3. As members of the Board, Respondents are charged with, among other things, voting on matters presented to the Board, and this includes personnel matters. Whether a Board member votes in favor of, or against, a recommended personnel appointment (which includes hiring, reappointing, renewing, non-renewing, or dismissing an employee) is within his/her discretion. The failure of a Board member to vote in favor of a recommended personnel matter does not mean that he or she became involved in activities or functions that are the responsibility of school personnel or the day-to-day administration of the school, only that he or she exercised her fundamental right to vote. As a result, the Commission finds that the alleged violation of *N.J.S.A. 18A:12-24.1(d)* in Counts 1-3 should be dismissed.

Alleged Violation of N.J.S.A. 18A:12-24.1(f)
(Count 2)

In **Count 2**, Complainant asserts that, by ignoring the CAO's recommendation to reappoint an SRO for the 2019-2020 school year, Respondents violated *N.J.S.A. 18A:12-24.1(f)* because Respondent Zakaria, "as the sponsor," and Respondents Hussain, Gonzalez, and Nadim "as the supporters," "surrendered their independent judgment as to the safety and wellbeing of students, to use the school for gain of friends, namely the town [p]olice [o]fficer who is also a [SRO], by removing anyone whose performance he can be compared against and evaluated."

Respondents **counter** that "the Complaint is devoid of any facts identifying any action taken on behalf of, or at the request of, any special interest or political group, or identifying any benefit acquired by Respondents or their family/friends." Instead, Complainant's broad allegation that Respondents surrendered their independent judgment does not have any "actual supporting facts."

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 Respondents took action on behalf of, or at the request of, a special interest group or persons organized and voluntarily united in opinion and who adhere to a particular political party or cause; or evidence that Respondents used the schools in order to acquire some benefit for themselves, a member of their immediate family or a friend.

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 Respondents violated *N.J.S.A. 18A:12-24.1(f)*. Complainant has not provided sufficient facts to demonstrate how Respondents (either individually or collectively) used the schools to acquire a benefit for a "friend," who is ostensibly "the town Police Officer who is also" an SRO. Although it appears that Respondent Zakaria may have some relationship with "the town Police Officer who is also" an SRO, Complainant has not offered any facts to establish how (or if) any other Respondent is a "friend" of this individual. Moreover, Complainant has not offered facts to establish how "the town Police Officer who is also" an SRO receives (or received) a benefit from the Board's failure to appoint another SRO. Therefore, the Commission finds that the alleged violation of *N.J.S.A. 18A:12-24.1(f)* in Count 2 should be dismissed.

Alleged Violation of N.J.S.A. 18A:12-24.1(g)
(Count 2)

In **Count 2**, Complainant states that Respondent Zakaria – a police officer – "failed to hold confidential personnel matters by publicly praising his fellow local police officer, who is also a [SRO] shared by the town and paid by the school, while deriding [the] SRO [who was not reappointed] as an 'outsider,' 'out of town,' implying he doesn't know his job." Based on these facts, Complainant claims that Respondents violated *N.J.S.A. 18A:12-24.1(g)* because Respondent Zakaria, "as the sponsor," and Respondents Hussain, Gonzalez, and Nadim "as the supporters," "failed to hold confidential all matter[s] pertaining to the schools, by debating in an open meeting the performance of the town police officer, and the [SRO] whose non-renewal reasons were discussed without his presence during the public meeting."

Respondents **counter** that “the Complaint is devoid of any facts identifying any confidential or inaccurate information or any disclosure of same,” and the alleged debate regarding the SRO is not reflected in the Board’s minutes.

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

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 Respondents violated *N.J.S.A.* 18A:12-24.1(g). Although Complainant claims that Respondents disclosed confidential information, she did not specifically detail the confidential nature that they disclosed, or the authority for her position that the information that they disclosed was, as alleged, actually confidential. As a result, the Commission finds that the alleged violation of *N.J.S.A.* 18A:12-24.1(g) in Count 2 should be dismissed.

Alleged Violations of N.J.S.A. 18A:12-24.1(i)
(Counts 1-3)

In **Count 1**, Complainant alleges that by ignoring the recommendation of the CAO and failing to appoint the Vice Principal for the 2019-2020 school year, Respondent Nadim “as the sponsor,” and Respondents Hussain, Gonzalez, and Zakaria “as the supporters,” violated *N.J.S.A. 18A:12-24.1(i)* because they “did not ‘support and protect school personnel in proper performance of their duties,’” namely the CAO and the Vice Principal.

In **Count 2**, Complainant argues that, by ignoring the CAO’s recommendation to reappoint an SRO for the 2019-2020 school year, Respondents violated *N.J.S.A.* 18A:12-24.1(i) because Respondents did not “support and protect school personnel in proper performance of their duties,” namely the CAO whose recommendation it was to reappoint the SRO.

In **Count 3**, Complainant contends that, by ignoring the CAO’s recommendation to hire two (2) custodians, and doing so “without having any prior complaints on their performance,” Respondents violated *N.J.S.A.* 18A:12-24.1(i) because they did not “support and protect [the CAO and the custodians] in proper performance of their duties.”

In response to the alleged violations of *N.J.S.A.* 18A:12-24.1(i) in Counts 1-3, Respondents **counter** that “the Complaint is devoid of facts identifying any actions which undermined, compromised, or harmed school personnel in the proper performance of their duties.” The fact that Respondents voted “no” on personnel and other Board matters is within

their prerogative as Board members, and the “mere act of voting contrary to others’ opinions does not constitute a basis for an alleged violation of the Act.”

As set forth in *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 Respondents 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 Respondents violated *N.J.S.A. 18A:12-24.1(i)* as set forth in Counts 1-3. The fact that Respondents did not vote to approve the personnel appointments/reappointments recommended by the CAO does not mean, in and of itself, that Respondents took “deliberate action” which undermined, opposed, compromised, or harmed the CAO, the Vice Principal, the SRO, and/or the custodians. Instead, Respondents’ decision not to vote affirmatively reflects their respective belief and position that, in their estimation, the personnel were not suited for the District and its needs. If, as Complainant suggests, Board members were tasked with mindlessly approving every recommendation made by the CAO, the authority and role of the Board would be significantly undermined. Therefore, the Commission finds that the alleged violation of *N.J.S.A. 18A:12-24.1(i)* in Counts 1-3 should be dismissed.

Alleged Violations of N.J.S.A. 18A:12-24.1(j)
(Counts 1-3)

In **Count 1**, Complainant alleges that by ignoring the recommendation of the CAO and failing to appoint the Vice Principal for the 2019-2020 school year, Respondent Nadim “as the sponsor,” and Respondents Hussain, Gonzalez, and Zakaria “as the supporters,” violated *N.J.S.A. 18A:12-24.1(j)* because none of the Respondents “elevated any complaints about the performance or any other issue with the Vice Principal prior to discussing the matter in an open public meeting.”

In **Count 2**, Complainant argues that, by ignoring the CAO’s recommendation to reappoint an SRO for the 2019-2020 school year, Respondents violated *N.J.S.A. 18A:12-24.1(j)* because none of the Respondents “elevated any complaints about the performance or any other issue with the SRO prior to discussing the matter in an open public meeting.”

In **Count 3**, Complainant contends that, by ignoring the CAO’s recommendation to hire two (2) custodians, and doing so “without having any prior complaints on their performance,” Respondents violated *N.J.S.A. 18A:12-24.1(j)* because none of the Respondents “elevated any complaints about the performance or any other issue with the custodians prior to discussing the matter in an open public meeting.”

In response to the alleged violations of *N.J.S.A. 18A:12-24.1(j)* in Counts 1-3, Respondents **counter** that “the Complaint and its attachments are devoid of any facts identifying any complaint, or any action undertaken by Respondents to investigate or resolve a complaint.”

Pursuant to *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 Respondents acted on or attempted to resolve a complaint, or conducted an investigation or inquiry related to a complaint (i) prior to referral to the chief administrative officer, or (ii) at a time or place other than a public meeting and prior to the failure of an administrative solution.

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 Respondents violated *N.J.S.A.* 18A:12-24.1(j) as suggested in Counts 1-3. As an initial matter, Complainant has not articulated any facts detailing the nature of any “complaint” allegedly received by Respondents (either individually or collectively), the actions that Respondents (either individually or collectively) took to resolve the complaint, or how the Respondents (either individually or collectively) attempted to resolve such a complaint. Instead, Complainant seems to argue that because none of the Respondents (either individually or collectively) ever voiced or filed a “complaint” about the personnel that they did not vote to appoint or reappoint (the Vice Principal in Count 1, the SRO in Count 2, and the custodians in Count 3), Respondents violated *N.J.S.A.* 18A:12-24.1(j). However, there is nothing in the Act, or its implementing regulations, which requires Board members to file or voice complaints about personnel performance before they can vote against (or in favor of) an appointment or reappointment. As a result, the Commission finds that the alleged violation of *N.J.S.A.* 18A:12-24.1(j) in Counts 1-3 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 Respondents violated *N.J.S.A.* 18A:12-24.1(a), *N.J.S.A.* 18A:12-24.1(d), *N.J.S.A.* 18A:12-24.1(i), and *N.J.S.A.* 18A:12-24.1(j) as alleged in Count 1, violated *N.J.S.A.* 18A:12-24.1(d), *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(i), and *N.J.S.A.* 18A:12-24.1(j) as argued in Count 2, and/or violated *N.J.S.A.* 18A:12-24.1(d), *N.J.S.A.* 18A:12-24.1(i), and *N.J.S.A.* 18A:12-24.1(j) as contended in Count 3.

IV. Request for Sanctions

At its meeting on September 24, 2019, the Commission considered Respondents’ request that the Commission find the Complaint frivolous, and impose sanctions pursuant to *N.J.S.A.* 18A:12-29(e). Despite Respondents’ argument, the Commission cannot find evidence that might show that Complainant filed the Complaint in bad faith or solely for the purpose of harassment, delay, or malicious injury. The Commission also does not have information to suggest that Complainant knew or should have known that the Complaint was without any reasonable basis in law or equity, or that it could not be supported by a good faith argument for an extension, modification or reversal of existing law. *N.J.A.C.* 6A:28-1.2. Therefore, at its meeting on October 25, 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 **grant** the Motion to Dismiss in its entirety because Complainant failed to plead sufficient, credible facts to support a finding that Respondents violated *N.J.S.A.* 18A:12-24.1(a), *N.J.S.A.* 18A:12-24.1(d), *N.J.S.A.* 18A:12-24.1(i), and *N.J.S.A.* 18A:12-24.1(j) as alleged in Count 1, violated *N.J.S.A.* 18A:12-24.1(d), *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(i), and *N.J.S.A.* 18A:12-24.1(j) as argued in Count 2, and/or violated *N.J.S.A.* 18A:12-24.1(d), *N.J.S.A.* 18A:12-24.1(i), and *N.J.S.A.* 18A:12-24.1(j) as contended in Count 3. The Commission also voted to find that the Complaint is not frivolous, and to deny Respondents' request for sanctions.

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

Robert W. Bender, Chairperson

Mailing Date: October 25, 2019

**Resolution Adopting Decision
in Connection with C46-19**

Whereas, at its meeting on September 24, 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 meeting on September 24, 2019, the Commission discussed granting the Motion to Dismiss in its entirety for failure to plead sufficient, credible facts to support the allegations that Respondents violated *N.J.S.A.* 18A:12-24.1(a), *N.J.S.A.* 18A:12-24.1(d), *N.J.S.A.* 18A:12-24.1(i), and *N.J.S.A.* 18A:12-24.1(j) as alleged in Count 1, violated *N.J.S.A.* 18A:12-24.1(d), *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(i), and *N.J.S.A.* 18A:12-24.1(j) as argued in Count 2, and/or violated *N.J.S.A.* 18A:12-24.1(d), *N.J.S.A.* 18A:12-24.1(i), and *N.J.S.A.* 18A:12-24.1(j) as contended in Count 3; and

Whereas, at its meeting on September 24, 2019, the Commission discussed finding the Complaint not frivolous, and denying Respondents' request for sanctions; and

Whereas, at its meeting on October 25, 2019, the Commission reviewed and voted to approve the within decision as accurately memorializing its actions/findings from its meeting on September 24, 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 October 25, 2019.

Kathryn A. Whalen, Director
School Ethics Commission