

***Before the School Ethics Commission  
Docket No.: C31-20  
Decision on Motion to Dismiss***

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**Claire Odierna,  
Complainant**

v.

**David Roth,  
Norwood Board of Education, Bergen County,  
Respondent**

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**I. Procedural History**

This matter arises from a Complaint that was filed on July 6, 2020, by Claire Odierna (Complainant), alleging that David Roth (Respondent), an administrator employed by the Norwood 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(a), *N.J.S.A.* 18A:12-24(b), and *N.J.S.A.* 18A:12-24(c).

On July 7, 2020, the Complaint was served on Respondent, via electronic 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.<sup>1</sup> On July 27, 2020, Respondent filed a Motion to Dismiss in Lieu of Answer (Motion to Dismiss), and on August 31, 2020, Complainant filed a response to the Motion to Dismiss.

The parties were notified by correspondence dated September 21, 2020, that this matter would be placed on the Commission's agenda for its meeting on September 29, 2020, in order to make a determination regarding the Motion to Dismiss. At its meeting on September 29, 2020, the Commission considered the filings in this matter and, at its meeting on October 27, 2020, 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 Respondent violated *N.J.S.A.* 18A:12-24(a), *N.J.S.A.* 18A:12-24(b), and/or *N.J.S.A.* 18A:12-24(c).

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<sup>1</sup> Due to the ongoing Coronavirus (COVID-19) pandemic, service of process was effectuated by the Commission through electronic transmission only.

## II. Summary of the Pleadings/Public Comment

### A. *The Complaint*

By way of background, Respondent is the Supervisor of Special Services for the Norwood Public School District (District), resides in the District, and has children who attend school in the District. In his position as the Supervisor of Special Services, Respondent oversees the Child Study Team (CST), and “[i]t is the job of the [D]istrict through the CST to make certain that [Complainant’s] children are provided with a [free appropriate public education (FAPE)]. According to Complainant, the “problem is that [Respondent] has become too personally involved in both of [her] children’s cases with the [District],” and his personal conflicts “prevent [her] children from receiving the FAPE that [they] are legally entitled to by law.”

As alleged by Complainant, Respondent has conflicts of interest that “range in breadth and depth” and “span over time and continue to occur in present time.” Complainant asserts that Respondent’s conflicts “constitute a recurring pattern” and prohibit Respondent “from impartial involvement, decision making and authority over [Complainant’s] children’s cases with the [CST].” Despite writing a letter to the Board and speaking with the Superintendent, Complainant’s “concerns remain unaddressed and unanswered.” As such, Complainant is requesting that Respondent “be removed from any involvement, decision-making and authority over anything related” to Complainant’s children and their cases with the CST.

In support of her claims, Complainant states that, at her request (and because she had concerns that her older child had learning disabilities), “testing and evaluations” were conducted by the CST earlier than scheduled. Notably, the testing, which was done by Respondent and the CST’s Learning Disabilities Teacher Consultant (LDTC), “did not indicate the existence of any learning disabilities.” However, as part of a neuropsychological evaluation six (6) months later, it was revealed that her child had three (3) learning disabilities. Complainant believes that Respondent “did not want these specific learning disabilities to be identified by the CST because then the district would have to support these learning disabilities,” and that he “chose to have these learning disabilities overlooked in an effort to save” the District money “and make himself look better to his superiors.” In addition, at an Individualized Education Plan (IEP) meeting on February 28, 2019, the case manager and Respondent advised that the District would be discontinuing occupational therapy (OT) services; would no longer provide her child with a 1:1 personal aide because her child “no longer needed the supports of a 1:1 personal aide”; would instead offer an aide that could be shared between her child and another in a 2:1 capacity; and would no longer provide a summer program to support her child’s emotional needs and social deficits.

Because Complainant was dissatisfied with the decision of the CST, she met with the Superintendent on or about June 13, 2019, and provided the Superintendent with documentation and information demonstrating why her child needed the services and programs that the District attempted to take away. Ultimately, the Superintendent agreed with Complainant. As Complainant left this meeting, she asked the Superintendent if she (the Superintendent) thought that Complainant’s requests were “reasonable and appropriate,” to which she replied, “***Yes...only if I’m not being recorded.***” As a result of this meeting, supports for Complainant’s

son were reinstated. Because the Superintendent believed that the supports were reasonable, Complainant argues that Respondent “is denying [her child] services for other reasons,” and personally uses his authority as the Supervisor of Special Services to deny her children the legal right to FAPE.

Complainant also noted that she learned from another parent that the District approached that parent about sharing the personal aide; however, because of scheduling issues, the students were not able to share the personal aide. Complainant further noted that because her child was more highly supported, the 1:1 personal aide had to be given to Complainant’s child. As such, Complainant argues that Respondent “flat out lied to [her] about the reason that the [D]istrict was not providing [her] child with a 1:1 personal aide” and it was “simply another effort to skimp on services at the expense of [her] child and to make himself [I]ook better to his own supervisor ... for his own personal reasons by saving the [D]istrict money.” These types of decisions, according to Complainant, “only help himself and his own immediate family members.”

Complainant also detailed, at length, alleged inappropriate statements made by Respondent with regard to conducting a neuropsychological evaluation. It is Complainant’s position that Respondent was more concerned with remaining “in the good graces” of his supervisors and with saving the District and the taxpayers (including himself) money than with providing FAPE for her child. The focus should have been what was most appropriate for the child, and not the cost of the evaluation; in fact, according to Complainant, the cost of the evaluation should never have been mentioned as a consideration. By placing too much emphasis on cost, Respondent is “obviously conflicted in acting as a taxpaying resident of Norwood” and being the Supervisor of Special Services.

On October 4, 2019, Complainant received a telephone call from her child’s social worker informing her that Respondent was “attempting to schedule an IEP meeting quickly for the purpose of [immediately] discontinuing [her child’s] placement at the [out of district school].” According to Complainant, the social worker and the case manager both disagreed with Respondent’s decision to change the placement. Ultimately, it was determined that there was not, despite Respondent’s actions, a request from the out of district school to immediately terminate her child’s placement. As such, Respondent “**created an inflated sense of panic, urgency and immediate turmoil when none existed.**” Complainant maintains that the mention of a change of placement was “**driven by [Respondent’s] personal dislike for [her], and he chose to utilize his position of authority as Supervisor of Special Services as a means of making things related to the education of her [child] unnecessarily difficult.**”

In addition, on December 18, 2019, Complainant was notified by telephone that her younger child was in the principal’s office because the child “punched three (3) other kindergarteners in the chest.” One of the students was Respondent’s child. The next day, Complainant sent correspondence to Respondent and the Superintendent requesting that the CST evaluate her child. Respondent denied her request because it was sent electronically. Although the request was sent as an attachment (and contained her physical signature on a typed letter), and although other families have submitted electronic requests without issue (i.e., denials), Respondent “was taking out his frustration at his own [child]/family member being punched in the chest by [her child].” Complainant further asserts that due to his child’s involvement in the

situation, Respondent should not have been allowed to be involved in any discussions regarding either of her children “from that point onward.”

Complainant maintains that Respondent’s behavior continued into the new year, namely during a meeting on February 10, 2020, when a request for supports for her child was denied, and continued to be denied by Respondent throughout the remainder of the year, despite the social worker’s and case manager’s attempts to find “alternate placement.” Complainant further maintains that Respondent “continues to make decisions regarding [her] children and their education despite being in a serious position of conflict of interest.” Furthermore, Respondent’s conflicts “are adversely affecting [her] children’s provision of FAPE by the [D]istrict.” However, one decision with which Respondent readily agreed was the decision to hold back Complainant’s younger child, thus ensuring that his own child was never in class with Complainant’s child again.

For the reasons set forth above, Complainant alleges that Respondent violated *N.J.S.A. 18A:12-24(a)*, *N.J.S.A. 18A:12-24(b)*, and *N.J.S.A. 18A:12-24(c)* because he, as a school official and a District administrator, and his immediate family have an interest in his professional duties “that are in substantial conflict with his proper discharge of his duties in the public interest.” Respondent’s “personal bias” against Complainant and her children, as well as his “growing disdain” for Complainant and her children “as a result of numerous ongoing and continuing events preclude him from impartially carrying out the proper discharge of his duties.” Respondent’s bias “combined with his position of authority and decision-making power over the education of [her] children and the services they receive ... is a major conflict of interest.” Respondent has “selectively enforced policies to [Complainant’s] family that he has not enforced to others,” and his personal involvement “prohibits him from acting in the proper discharge of his duties in the public trust.” Respondent has used his position “time and time again as retaliation for [Complainant] advocating for the rights of [her] children,” and because one of her children “punched [Respondent’s child] and has also thrown sharp objects in the classroom ... where [Respondent’s] own child ... attends.” Respondent’s administrative position “as the supervisor of the CST has given both himself and his immediate family members undue and unwarranted privileges in having decision-making authority over [her] children.”

Respondent “has used his official capacity and administrative position to gain benefit for himself via retaliation against [her] family through CST determinations and decisions that relate to [her] children.” Respondent’s ready agreement to hold back one of Complainant’s children “was a very self-motivated” and “self-serving” decision because, by agreeing, “it would ensure that [Respondent’s child]” would never be in a class again with [Complainant’s child].” This type of decision-making authority gives Respondent and his family “a clear and direct benefit, especially given the punching incident and the many incidents of throwing items.” In addition, his agreement to hold her child back “evidences the other fact that he KNEW and was VERY WELL AWARE that [her child] was not receiving FAPE all along ... .” As such, Respondent was either using his position to prevent her child from receiving FAPE, which is retaliatory, or he was using his authority to gain a position of advantage for his own child by ensuring that his child did not have to be in class with Complainant’s child. Either way, Respondent’s use of his position “has resulted in his numerous and continuous conflicts of interest that negatively and directly impact” Complainant and her child.

**B. Motion to Dismiss**

Following receipt of the Complaint, Respondent filed a Motion to Dismiss and contends that the Complaint “fails to set forth sufficient factual allegations which, if proven true, suggest that [he] violated” *N.J.S.A. 18A:12-24(a)*, *N.J.S.A. 18A:12-24(b)*, or *N.J.S.A. 18A:12-24(c)*. Regarding the alleged violation of *N.J.S.A. 18A:12-24(a)*, Respondent argues that, according to Complainant, he has a “conflict of interest because he is a taxpayer” who lives in the District and has a child who was in the same kindergarten class as Complainant’s child, and these circumstances “pose[] a potential conflict interfering with the proper discharge of his duties.” Respondent further argues that Complainant believes that Respondent “denied her children certain special education services and supports and access to a truly collaborative IEP team because he harbors a deep disdain” for Complainant and her children, and because he “wanted to save the District money supplied by taxpayers, such as himself.” However, Respondent maintains that Complainant has not provided any proof that Respondent “has an interest in a business organization or has engaged in a business, transaction, or professional activity other than acting as the Supervisor of Special Services.” Respondent asserts that as the Supervisor of Special Services, his responsibilities include evaluating the need for further testing, approving out of district placements, and overseeing the implementation of special education services and classroom supports. Therefore, and because Respondent was performing his responsibilities as Supervisor of Special Services, Complainant failed “to set forth a claim” for a violation of *N.J.S.A. 18A:12-24(a)*.

As to the alleged violations of *N.J.S.A. 18A:12-24(b)* and *N.J.S.A. 18A:12-24(c)*, Respondent maintains that Complainant did not provide any evidence that he “used his position as [Supervisor] to obtain ‘unwarranted privileges, advantages or employment,’ specifically lower taxes or a better reputation in front of his supervisor.” As to the removal of the 1:1 aide, Complainant did not demonstrate how Respondent “lied to [her] about [her child] no longer needing a 1:1 personal aide to save the District money and make himself look better to his own supervisor.” Complainant’s conversation with another parent is not evidence that Respondent “made such a decision to save money.” Regarding the testing that is “very expensive, only conducted once a year, and paid for with taxpayer money,” and that Respondent is “too personally involved and conflicted as a resident and taxpayer ...,” Respondent argues that Complainant did not provide any proof that Respondent “denied this testing,” “overlooked” her child’s learning disabilities, nor that he “manipulated the District’s educational evaluation so that it did not reveal any of the learning disabilities” that were later identified. As to the out of district placement, Respondent notes that Complainant did not provide any allegations that her child was placed back in the District nor any suggestion of how that change would have saved the District money and affected Respondent’s taxes or reputation. Regarding the allegation that Respondent denied an evaluation for Complainant’s child (kindergarten), Respondent maintains that Complainant did not provide any evidence that he denied such a request, or that he denied providing services because it would affect his taxes and reputation. Furthermore, and although Respondent’s decision to “hold back” Complainant’s child “ensured that his [child] and [her child] would no longer be in the same grade,” none of the facts suggest that he made that decision for that reason. Respondent further argues that Complainant did not provide any evidence to support her allegations that Respondent made these decisions “because he disliked” Complainant and her children. Therefore, Complainant failed to offer sufficient facts to support a violation *N.J.S.A. 18A:12-24(b)* or *N.J.S.A. 18A:12-24(c)*.

Based on the above, Respondent “respectfully requests” that the Complaint be dismissed “with prejudice for failure to state a claim upon which relief can be granted.”

**C. *Response to Motion to Dismiss***

In response to the Motion to Dismiss, Complainant argues that her allegations were “based on, among other factual assertions, a pervasive pattern of bias and discrimination” by Respondent “stemming from several conflicts of interest.” More specifically, Respondent’s refusal to recuse himself from supervising the cases involving her children, after one of her children physically assaulted his child. Complainant argues, “it was immediately after this event” when Respondent’s “animus and discriminatory behavior grew even greater resulting in [a] selective enforcement of policies” regarding Complainant’s children. Complainant further reaffirms that Respondent retaliated against her when he denied her request for an evaluation simply based on “a mere procedural technicality” (sending the request electronically). Complainant maintains “[t]hrough this retaliation[,] Respondent and his [child] received retribution for the assault against Respondent’s [child]. Complainant reasserts that “after denying a number of requests,” Respondent “quickly agreed” to grant the request to hold back Complainant’s child “presumably benefitting Respondent” because his child would no longer be in the same class as hers. Complainant reasserts that Respondent’s “acts of bias culminated” and are clear violations of *N.J.S.A.* 18A:12-24(a), *N.J.S.A.* 18A:12-24(b), and *N.J.S.A.* 18A:12-24(c), and the Motion to Dismiss should be denied.

**D. *Public Comments Offered by Complainant at the Commission’s Meeting on September 29, 2020***

Complainant appeared, by telephone, for the Commission’s meeting on September 29, 2020, to offer public comment. More specifically, during the first public comment period, Complainant thanked the Commission for its time and consideration, and indicated she is available to answer any questions that the Commission may have regarding the above-captioned matter.

During the second public comment period, which began after Executive Session concluded, Complainant again thanked the Commission for its time in reviewing her Complaint. Complainant also stated that her “detailed Complaint” contains a lot of personal information and explains how she and her family were impacted by the actions and decisions by Respondent. Complainant again noted her willingness to answer any questions from the Commission.

### **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)*, and/or *N.J.S.A. 18A:12-24(c)*.

#### **B. *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)*, and *N.J.S.A. 18A:12-24(c)*. 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;

Before more fully addressing the allegations in the Complaint, the Commission notes that its authority is limited to enforcing the Act, *N.J.S.A. 18A:12-21 et seq.*, a set of minimum ethical standards by which all school officials must abide. In this regard, the Commission only has jurisdiction 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's or the District's actions violated a state and/or federal law(s), or constituted "retaliation" because Complainant availed herself (on behalf of her child(ren)) of her rights pursuant to a state and/or federal law(s), the Commission notes that such a determination(s) falls outside the scope of its authority and jurisdiction. Nonetheless, Complainant may be able to pursue, or may have already pursued, those claims in the appropriate forum.

### *Alleged Violation of N.J.S.A. 18A:12-24(a)*

Complainant alleges that Respondent, as a school official and a District administrator, and his immediate family have an “interest” in his professional duties as the Supervisor of Special Services “that are in substantial conflict with his proper discharge of his duties in the public interest.” According to Complainant, Respondent’s “personal bias” against Complainant and her children, as well as his “growing disdain” for Complainant and her children “as a result of numerous ongoing and continuing events preclude him from impartially carrying out the proper discharge of his duties.”

Respondent counters that Complainant has not provided any proof that Respondent “has an interest in a business organization or has engaged in a business, transaction, or professional activity other than acting as the Supervisor of Special Services.” Respondent asserts that as the Supervisor of Special Services, his responsibilities include evaluating the need for further testing, approving out of district placements, and overseeing the implementation of special education services and classroom supports. Therefore, and because Respondent was performing his responsibilities as Supervisor of Special Services, Complainant failed “to set forth a claim” for a violation of *N.J.S.A. 18A:12-24(a)*.

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 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(a)*. In this regard, the Complaint does not set forth any facts which could possibly establish, or which even suggest, that Respondent or a member of his immediate family had an “interest” in a business organization.<sup>2</sup> In addition, because the allegations in the Complaint relate to duties and responsibilities clearly within the authority of the IEP team and the Supervisor of Special Services, there are no facts indicting that Respondent engaged in an external “business, transaction, or professional activity” that was in substantial conflict with the proper discharge of his duties as the Supervisor of Special Services. Although Complainant is free to disagree with, and to challenge the decisions that the IEP team and Respondent made in his capacity *as the Supervisor of Special Services*, their collective “failure” to make decisions with which Complainant agrees is an insufficient basis to establish a violation of this subsection of the Act, but could be pursued in another forum. Therefore, the Commission finds that the alleged violation of *N.J.S.A. 18A:12-24(a)* should be dismissed.

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<sup>2</sup> Pursuant to *N.J.S.A. 18A:12-23*, “interest” means the ownership or control of more than 10% of the profits, assets, or stock of a business but shall not include the control of assets in a labor union.

### *Alleged Violation of N.J.S.A. 18A:12-24(b)*

Complainant asserts that Respondent has used his position “time and time again as retaliation for [Complainant] advocating for the rights of [her] children,” and because one of her children “punched [Respondent’s child] and has also thrown sharp objects in the classroom ... where [Respondent’s] own child ... attends.” Respondent’s administrative position “as the supervisor of the CST has given both himself and his immediate family members undue and unwarranted privileges in having decision-making authority over [her] children.” In addition, Respondent’s ready agreement to hold back one of her (Complainant’s) children “was a very self-motivated” and “self-serving” decision because, by agreeing, “it would ensure that [Respondent’s child]” would never be in a class again with [Complainant’s child].” Finally, Respondent’s involvement in the decision(s) to discontinue service(s) for her child(ren) was “simply another effort to skimp on services at the expense of [her] child and to make himself [l]ook better to his own supervisor ... for his own personal reasons by saving the [D]istrict money.”

Respondent counters that Complainant did not provide any evidence that Respondent “used his position as [the Supervisor of Special Services] to obtain ‘unwarranted privileges, advantages or employment,’ specifically lower taxes or a better reputation in front of his supervisor.” Furthermore, and although the decision to “hold back” Complainant’s child “ensured that his [child] and [her child] would no longer be in the same grade,” none of the facts suggest that he made that decision for that reason.

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 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(b)*. In short, there are no facts presented in the Complaint which establish how Respondent used his official position as the Supervisor of Special Services to secure “unwarranted” privileges, advantages, or employment for himself or his child; instead, Complainant only offers, and reiterates, her belief that Respondent is, or is not, making certain decisions because he does not “like” Complainant and/or her children. As a parent, Complainant is always free to, and should, challenge and appeal the decisions of a District if she feels they are “wrong” or adversely impact her child’s education.

There is also no evidence, as suggested, that Respondent’s continued employment is predicated on “savings” that the District can realize as a result of Respondent’s decisions as the Supervisor of Special Services. There is also no evidence explaining how his decision(s) in *this* case resulted in Respondent’s continued and “unwarranted” District employment. In addition, although Respondent is also a resident of the District and, therefore, his taxes could be impacted by any decision(s) that he makes as the Supervisor of Special Services, how his decisions in *this* case could have resulted in an “unwarranted” privilege or advantage for *him* and/or his immediate family is not sufficiently clear. Finally, and regarding the decision to retain Complainant’s child, because this request originated from Complainant, it is unclear how

Respondent's agreement could have caused him and/or his child to experience an "unwarranted" privilege or advantage. As such, the Commission finds that the alleged violation of *N.J.S.A. 18A:12-24(b)* should be dismissed.

***Alleged Violation of N.J.S.A. 18A:12-24(c)***

Complainant contends Respondent "has used his official capacity and administrative position to gain benefit[s] for himself via retaliation against [her] family through CST determinations and decisions that relate to [her] children." In addition, Respondent's use of his position "has resulted in his numerous and continuous conflicts of interest that negatively and directly impact" Complainant and her child(ren). Furthermore, Respondent makes decisions which negatively impact the education of her children in order to save the District money, and to "make himself [l]ook better to his own supervisor."

Respondent counters that Complainant did not provide any evidence to support her allegations that Respondent made educational decisions regarding her (Complainant's) child(ren) "because he disliked" Complainant and/or her child(ren). In addition, Complainant did not provide any evidence that he denied Complainant's requests for services, or denied providing services, because it would positively impact his taxes and/or reputation.

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, a member of his immediate family, or a business organization in which he has an interest, had a direct or indirect financial involvement that might reasonably be expected to impair his objectivity, or in a matter where he or a member of his immediate family had a personal involvement that created some benefit to him or to a member of his immediate family.

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(c)*. The Commission notes that, as the Supervisor of Special Services, Respondent's duties and responsibilities include, among other things, overseeing the implementation of special education services in the District. The fact that Respondent is also a tax-paying resident in the District does not mean, in and of itself, that he cannot be objective in his position as the Supervisor of Special Services, and/or that any decision(s) by Respondent, ostensibly in conjunction with the IEP team, to discontinue service(s) for a student(s) is an effort to save *himself* money.

In addition, even if, as argued by Complainant, the decision to hold back Complainant's child resulted in a "benefit" to Respondent's child, that "benefit" was no greater, or less than, the benefit provided to any other student. Furthermore, and of importance, the decision to hold back Complainant's child emanated from *Complainant*, and not from Respondent's personal or professional motivations. Therefore, the Commission finds that the alleged violation of *N.J.S.A. 18A:12-24(c)* 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), and/or *N.J.S.A.* 18A:12-24(c).

#### **IV. 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 Respondent violated *N.J.S.A.* 18A:12-24(a), *N.J.S.A.* 18A:12-24(b), and/or *N.J.S.A.* 18A:12-24(c).

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).*

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Robert W. Bender, Chairperson

Mailing Date: October 27, 2020

***Resolution Adopting Decision  
in Connection with C31-20***

***Whereas***, at its meeting on September 29, 2020, the School Ethics Commission (Commission) considered the Complaint, the Motion to Dismiss in Lieu of Answer (Motion to Dismiss), and the response to the Motion to Dismiss submitted in connection with the above-referenced matter; and

***Whereas***, at its meeting on September 29, 2020, 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)*, and/or *N.J.S.A. 18A:12-24(c)*; and

***Whereas***, at its meeting on October 27, 2020, the Commission reviewed and voted to approve the within decision as accurately memorializing its actions/findings from its meeting on September 29, 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.

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Robert W. Bender, Chairperson

I hereby certify that the Resolution was duly adopted by the School Ethics Commission at its public meeting on October 27, 2020.

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Kathryn A. Whalen, Director  
School Ethics Commission