

Before the School Ethics Commission
Docket No.: C56-21
Decision on Motion to Dismiss

Rachel Collins,
Complainant

v.

Scott Heino,
Chesterfield Board of Education, Burlington County,
Respondent

I. Procedural History

This matter arises from a Complaint that was filed on October 15, 2021, by Rachel Collins (Complainant), alleging that Scott Heino (Respondent), the Superintendent/Chief School Administrator employed by the Chesterfield Board of Education (Board), violated the School Ethics Act (Act), *N.J.S.A. 18A:12-21 et seq.* By correspondence dated October 20, 2021, and October 25, 2021, Complainant was notified that the Complaint was deficient, and required amendment before the School Ethics Commission (Commission) could accept her filing. On October 26, 2021, Complainant cured all defects and filed an Amended Complaint (Complaint) that was deemed compliant with the requirements detailed in *N.J.A.C. 6A:28-6.3*. More specifically, the Complainant avers that Respondent violated “*N.J.S.A. 18A:12-24(b), N.J.S.A. 18A:12-24(f), N.J.S.A. 18A:12-24(a), N.J.S.A. 18A:12-24(b), N.J.S.A. 18A:12-24(c), N.J.S.A. 18A:12-24(e), and N.J.S.A. 18A:12-24(g)*” in Count 1 (Statement of Facts/Paragraph 1), and violated “*N.J.S.A. 18A:12-24(a)*” in Count 2 (Statement of Facts/Paragraphs 2-3).

On October 27, 2021, the Complaint was served on Respondent, via electronic mail, notifying him that charges were filed against him with the Commission, and advising that he had twenty (20) days to file a responsive pleading.¹ On November 19, 2021, Respondent filed a Motion to Dismiss in Lieu of Answer (Motion to Dismiss), and also alleged that the Complaint is frivolous. On November 24, 2021, Complainant filed a response to the Motion to Dismiss and allegation of frivolous filing.

The parties were notified by correspondence dated January 28, 2022, that this matter would be placed on the Commission’s agenda for a special meeting on February 4, 2022, in order to make a determination regarding the Motion to Dismiss and allegation of frivolous filing. At a special meeting on February 4, 2022, the Commission considered the filings in this matter and, at a special meeting on February 25, 2022, the Commission voted to dismiss the purported

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

violations of *N.J.S.A.* 18A:12-24.1(a), *N.J.S.A.* 18A:12-24.1(b), *N.J.S.A.* 18A:12-24.1(c), *N.J.S.A.* 18A:12-24.1(e), and *N.J.S.A.* 18A:12-24.1(g) in Count 1 (Statement of Facts/Paragraph 1), and the alleged violations of *N.J.S.A.* 18A:12-24.1(a) in Count 2 (Statement of Facts/Paragraphs 2-3) because the provisions of the Code of Ethics for School Board Members (Code) do not apply to Respondent, the Superintendent/Chief School Administrator, and to grant the Motion to Dismiss as to the remaining allegations, namely as to *N.J.S.A.* 18A:12-24(b) and/or *N.J.S.A.* 18A:12-24(f) in Count 1 (Statement of Facts/Paragraph 1), because Complainant failed to plead sufficient, credible facts to support violations. The Commission also voted to find that the Complaint is 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 her child has a 504 Plan and it is difficult for her child to wear a mask; however, Complainant sent her child to school with a "double layered breathable fabric mask." Complainant maintains that "two times an official came in [the child's] classroom to remove the mask and provide [the child] with a school issued mask." Based on these actions, and because "other children in the building are allowed to wear the same exact mask [her] child had on that was taken away," Complainant filed a harassment, Intimidation & Bullying (HIB) complaint with the Burlington County Interim Executive County Superintendent (ECS). Complainant filed the HIB complaint with the ECS because Respondent (the Principal/Superintendent) refused to file it. Complainant believes the "arbitrary" decision regarding her child's mask is a result of "retaliatory behavior due to ongoing litigation with the [D]istrict." Following receipt of Complainant's filing, the ECS advised Complainant that, "every child has to wear a mask." Complainant notes that the ECS did not conduct an investigation, and did not ask any questions related to Complainant's complaint. Complainant subsequently filed an OPRA request for the "emails between" Respondent and the ECS. Ultimately, and because the correspondence between Respondent and the ECS contains untruthful information, Complainant argues that Respondent has "created a situation where parents [cannot] trust him in the care of their children," and has "caused a situation where he failed to ensure public confidence, defamed [Complainant's] character and disregarded [her] child." Complainant asserts Respondent "used his power to stop a HIB investigation (against him), and violated [her] child's rights and protections under 504." Complainant notes Respondent "continues to lie and to [the] detriment of [her] child and [the child's] disability."

With the above in mind and in **Count 1**, Complainant asserts Respondent violated *N.J.S.A.* 18A:12-24(b) because he "used his position and title to obtain privilege (sic) over [Complainant] as the HIB complainant with the [ECS]" and because he "attempted to use privileged information, to benefit himself against [her] child"; violated *N.J.S.A.* 18A:12-24(f) because Respondent used "information that is not available to the general public" and, without her (Complainant's) authorization, "initiated correspondence with [the ECS] to speak on a pending case that had nothing to do with the HIB complaint [she] was attempting to file"; violated *N.J.S.A.* 18A:12-24(a) because he "lied about [Complainant's] child have [(sic)] a 504 plan to [the ECS]"; *N.J.S.A.* 18A:12-24(b) because he "disregarded [her] child's welfare to

obtain special privileges for himself”; violated *N.J.S.A.* 18A:12-24(c) because he “acted outside of policy making, in order to stop a HIB complaint against him” and “did this by lying to [the ECS]”; violated *N.J.S.A.* 18A:12-24(e) because Respondent “never addressed the situation with the [Board]” and “took private action without consulting the [Board]” thereby compromising the integrity of the Board; and violated *N.J.S.A.* 18A:12-24(g) because he “disclosed confidential matters,” “lied about ongoing litigation,” lied about a judge ruling against [Complainant],” “lied about the Burlington County Prosecutor[’s] involvement,” “lied and said [Complainant’s] child does not have a 504 [P]lan,” “lied and said [Complainant has] not provided any medical documentation,” “lied and said [Complainant’s] HIB complaint was in regard to [her child] having to wear a mask,” “disclosed [her] minor child’s personal information, without consent,” and “made the subject line of his [] personal email with [the ECS] “[Child’s name] Emails.”

In **Count 2**, Complainant contends that, on September 29, 2021, she received information that the District’s students were required to wear face shields while eating, and it was difficult for them to do so. As a result, she contacted Respondent and asked, “why they were doing this, what classes were enforcing this, and why didn’t the school ask parents[’] permission or tell them.” Complainant contends Respondent “proceeded to say ‘all [Complainant does] is provide inaccurate lies’” and that “no teacher was having children wear face shields to eat.” Complainant notes she has an email from a teacher to the contrary, and a statement from an administrator acknowledging the use of the face shields. Based on this information, Complainant asserts Respondent violated *N.J.S.A.* 18A:12-24(a) because he “never received consent or told parents [that] teachers in his school building were forcing children to wear face shields while eating,” and when Complainant brought the issue to Respondent’s attention he told Complainant, “all [she does] is spread inaccurate information,” “[e]luded [Complainant] to being a liar,” and “violated the safety and well being of the children in his care.” Respondent also (inaccurately) informed Complainant “there currently is not an opt out policy for parents for curriculum content that is against their conscience,” stated “the school does not maintain or have any curriculum guides for [Complainant] to look at,” and “asserted he doesn’t even know the days [her child] will be forced to learn the school’s sexuality curriculum.”

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

Following receipt of the Complaint, Respondent filed a Motion to Dismiss and allegation of frivolous filing. Respondent preliminarily argues that the allegations are “inaccurate, some to the point of becoming, outright falsehoods,” and many of Complainant’s “purported allegations clearly do not allege any allegations remotely related to the cited portions of” *N.J.S.A.* 18A:12-24, and seem to refer to the Code, the provisions of which are not applicable to Respondent. Therefore, Respondent asserts “the Complaint should be dismissed *in toto*, and Complainant subject to sanctions.”

Notwithstanding the above, regarding the alleged violations of *N.J.S.A.* 18A:12-24(b), Respondent contends Complainant has “failed to allege any facts that would support the claims that” Respondent was “attempting to secure unwarranted privileges, advantages, or employment for him[self].” Respondent maintains that he was providing “accurate and public background information on the situation to the [ECS], which he had every right to do after Complainant raised a concern to the [ECS], and directly called into question” Respondent’s actions. Moreover,

Complainant did not provide any evidence to support her allegation that Respondent violated *N.J.S.A.* 18A:12-24(b), and did not indicate what “special privileges” Respondent obtained (or attempted to obtain).

As to the purported violations of *N.J.S.A.* 18A:12-24(a), Respondent argues Complainant has not alleged that Respondent “or a member of his immediate family has an interest in a business organization or has engaged in a business” Respondent notes he did not lie, and he is aware that Complainant’s child “has a 504.” Respondent submits he was attempting to “convey” that Complainant did not provide adequate medical documentation that would support a full mask exemption for her child. Respondent maintains he was informing the ECS that Complainant was told that if she provided the school with proper medical documentation then her child’s 504 could be amended to include a mask exemption; in this way, Complainant’s “allegation to the contrary is misleading and offensive.” As for the safety shields, Respondent submits that a teacher offered them to students while they were eating “as an additional safety precaution.” Respondent avers “no students were required to wear the face shield.” Respondent also states that Complainant “was offered a detailed explanation of the curriculum, and told she would be contacted when the questioned lessons were to be taught to give her the option to opt her child out.” Furthermore, the building principal met with Complainant to answer her questions.

Regarding the alleged violations of *N.J.S.A.* 18A:12-24(f), Respondent asserts Complainant did not allege that Respondent, “his immediate family or a business or organization received a financial gain from any actions.” According to Respondent, he shared a matter with the ECS that was public record, and which he was allowed to share with the ECS. Respondent notes “even if he did lie, which he did not, and the allegation that he did is offensive, to assert that his actions rise to the level of an *N.J.S.A.* 18A:12-24(f) violation is patently absurd, and is exactly the type of allegation that should be sanctioned.”

As the purported violations of *N.J.S.A.* 18A:12-24(c), Respondent argues that Complainant has not alleged that Respondent or a member of his immediate family has an interest in a business organization” Respondent contends that Complainant filed a HIB complaint, which was investigated by the District. However, Complainant was attempting to claim HIB against the District because “they are required to ensure that student’s wear some type of mask,” which is not a HIB violation. Respondent further contends he offered Complainant “accurate factual background to explain the situation,” and that he did not deter Complainant from communicating with the ECS or from presenting evidence contrary to his position.

Regarding the alleged violations of *N.J.S.A.* 18A:12-24(e), Respondent maintains Complainant’s language for this provision “appears to be alleging a violation of” Code, which is not applicable to Respondent because he is the Superintendent/Chief School Administrator. Moreover, a violation of *N.J.S.A.* 18A:12-24(e) “addresses solicitation of gifts,” and Complainant “references handling a situation without consulting the” Board. Respondent argues Complainant’s “true obvious reference to the [Code], which [] Complainant clearly knew did not apply because she cited *N.J.S.A.* 18A:12-24, is exactly the type of proof of disregard for the law that warrants . . . the imposition of sanctions against Complainant.”

As to the purported violation of *N.J.S.A.* 18A:12-24(g), Respondent notes again Complainant seems to be citing to the Code and, as an administrator, he is not bound by those provisions. Regardless, Respondent submits that he was “simply providing accurate and public background information on the situation to the [ECS]”

Finally, Respondent maintains that Complainant “failed completely to offer facts that support each of her claims.” Furthermore, “it was clear that Complainant was aware the [Code], was not applicable to [administrators], however, she continued to plead her allegations as if she were pleading a violation of the [Code], while referencing its ... counterpart, which are clearly not [the] same.” For these reasons, Respondent contends the Complaint is **frivolous**. Therefore, Respondent “respectfully” requests that the Complaint be dismissed in its entirety, and sanctions imposed for Complainant’s frivolous filing.

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

In response to the Motion to Dismiss and allegation of frivolous filing, Complainant argues Respondent has “failed to provide any documented proof or factual evidence” that the Complaint is frivolous, and the Commission should deny Respondent’s request. Complainant reaffirms her allegations, and notes that Respondent “fails to explain why he provided any information to [the ECS] regarding” Complainant and/or her child. Complainant further notes Respondent “lied” about Complainant “to the prosecutor’s office.” According to Complainant, Respondent’s contention that she did not provide “enough medical documentation” for her child’s 504 Plan was “an attempt to stop a HIB complaint” from being filed against him. Complainant maintains Respondent was seeking privilege over her minor child.

Complainant also contends Respondent has not informed the community that he was aware children were “being given face shields in [first] grade to eat their lunch and continues to refuse to provide Complainant with curriculum guides and an “OPT OUT” policy. Complainant maintains Respondent “tried to slander [her] with harassment claims and did not meet the statutory regulations for allowance of submittal of a response motion to dismiss with this venue.” Per Complainant, Respondent’s “negative and derogatory treatment goes against maintaining public integrity in daily operations in Chesterfield Elementary School.” Moreover, Respondent has “failed to uphold his duty to the [Board] and the [] community.”

III. Analysis

A. Claims Against Respondent

The face of the Complaint suggests that Respondent, the Chesterfield School District’s (District) Superintendent/Chief School Administrator, violated multiple subsections of *N.J.S.A.* **18A:12-24 (Prohibited acts)**, namely *N.J.S.A.* 18A:12-24(b), *N.J.S.A.* 18A:12-24(f), *N.J.S.A.* 18A:12-24(a), *N.J.S.A.* 18A:12-24(b), *N.J.S.A.* 18A:12-24(c), *N.J.S.A.* 18A:12-24(e), and *N.J.S.A.* 18A:12-24(g) in Count 1 (Statement of Facts/Paragraph 1), and *N.J.S.A.* 18A:12-24(a) in Count 2 (Statement of Facts/Paragraphs 2-3). These provisions of the Act state:

- 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;
- ...
- e. No school official, or member of his immediate family, or business organization in which he has an interest, shall solicit or accept any gift, favor, loan, political contribution, service, promise of future employment, or other thing of value based upon an understanding that the gift, favor, loan, contribution, service, promise, or other thing of value was given or offered for the purpose of influencing him, directly or indirectly, in the discharge of his official duties. This provision shall not apply to the solicitation or acceptance of contributions to the campaign of an announced candidate for elective public office, if the school official has no knowledge or reason to believe that the campaign contribution, if accepted, was given with the intent to influence the school official in the discharge 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;
- g. No school official or business organization in which he has an interest shall represent any person or party other than the school board or school district in connection with any cause, proceeding, application or other matter pending before the school district in which he serves or in any proceeding involving the school district in which he serves or, for officers or employees of the New Jersey School Boards Association, any school district. This provision shall not be deemed to prohibit representation within the context of official labor union or similar representational responsibilities;

However, when the factual averments and statutory language cited by Complainant are scrutinized, it is clear that while Complainant properly asserts violations of *N.J.S.A.* 18A:12-24(b) and *N.J.S.A.* 18A:12-24(f) in Count 1 (Statement of Facts/Paragraph 1), she also improperly alleges multiple violations of ***N.J.S.A.* 18A:12-24.1 (the Code of Ethics for School Board Members)**, provisions which do not apply to Respondent because he is an administrator, not a Board member.² The cited provisions of the Code state:

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

b. I will make decisions in terms of the educational welfare of children and will seek to develop and maintain public schools that meet the individual needs of all children regardless of their ability, race, creed, sex, or social standing.

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

...

e. I will recognize that authority rests with the board of education and will make no personal promises nor take any private action that may compromise the board.

f. I will refuse to surrender my independent judgment to special interest or partisan political groups or to use the schools for personal gain or for the gain of friends.

g. I will hold confidential all matters pertaining to the schools which, if disclosed, would needlessly injure individuals or the schools. In all other matters, I will provide accurate information and, in concert with my fellow board members, interpret to the staff the aspirations of the community for its school.

In its review, the Commission finds that Complainant improperly claims that Respondent, a school administrator, violated *N.J.S.A.* 18A:12-24.1(a) (because "... [Respondent] lied about my child..."), *N.J.S.A.* 18A:12-24.1(b) (because "... [Respondent] disregarded my child's welfare..."), *N.J.S.A.* 18A:12-24.1(c) (because "... [Respondent] acted outside of policy making..."), *N.J.S.A.* 18A:12-24.1(e) (because "... [Respondent] took private action without consulting the Board ..."), and *N.J.S.A.* 18A:12-24.1(g) (because "... [Respondent] disclosed confidential matters. He lied about ongoing litigation ...") in Count 1 (Statement of

² In correspondence dated October 25, 2021, the Commission's staff specifically advised Complainant, "The Complaint alleges a violation of the Code of Ethics for Board Members (*N.J.S.A.* 18A:12-24.1) against a Respondent ... who is **not** a school board member. *N.J.A.C.* 6A:286.3(c)..." Thereafter, all specific references to the Code were removed from the Complaint.

Facts/Paragraph 1), and also argues Respondent violated *N.J.S.A.* 18A:12-24.1(a) (because "... [Respondent] never received consent or told parents ... he told ... someone ... all [Complainant does] is spread inaccurate information ... [Respondent] violated the safety and well being of the children ..."; and "... [Respondent] told [Complainant she] was a liar and ... said all [Complainant does] is provide inaccurate information ... ";) in Count 2 (Statement of Facts/Paragraphs 2-3).

As argued by Respondent, the provisions of the Code only regulate the conduct of Board members, and do not apply to the conduct of administrators. In this regard, the preliminary statement of *N.J.S.A.* 18A:12-24.1 ("*Code of Ethics for School Board Members*") states, "*A school board member shall abide by the following Code of Ethics for School Board Members*" (emphasis added). Neither the title of the statute, nor its substantive provisions, indicate that the provisions of the Code apply to anyone other than Board members. In addition, the regulations implementing the provisions of the School Ethics Act, and particularly *N.J.A.C.* 6A:28-6.3(c), specifically provide that, "A complaint alleging solely a violation of the code of ethics for school board members *shall name only school board members as respondents...*" (emphasis added). Consequently, there is no statutory or regulatory authority to apply the provisions of the Code to Respondent.

With the above in mind, and because Respondent is not a Board member, but rather the District Superintendent/Chief School Administrator, the purported violations of *N.J.S.A.* 18A:12-24.1(a), *N.J.S.A.* 18A:12-24.1(b), *N.J.S.A.* 18A:12-24.1(c), *N.J.S.A.* 18A:12-24.1(e), and *N.J.S.A.* 18A:12-24.1(g) in Count 1 (Statement of Facts/Paragraph 1), and the alleged violations of *N.J.S.A.* 18A:12-24.1(a) in Count 2 (Statement of Facts/Paragraphs 2-3) are **hereby dismissed**. With the dismissal of these claims, the only remaining allegations are the contended violations of *N.J.S.A.* 18A:12-24(b) and *N.J.S.A.* 18A:12-24(f) in Count 1 (Statement of Facts/Paragraph 1).

B. *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 asserted sufficient facts which, if true, could support a finding that Respondent violated *N.J.S.A.* 18A:12-24(b) and/or *N.J.S.A.* 18A:12-24(f) in Count 1 (Statement of Facts/Paragraph 1).

C. *Allegations of Prohibited Acts*

In the remaining allegations of the Complaint, Complainant proffers that Respondent violated *N.J.S.A.* 18A:12-24(b) and *N.J.S.A.* 18A:12-24(f) in Count 1 (Statement of Facts/Paragraph 1). As detailed above, these provisions of the Act provide:

- 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;

...

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;

In Count 1 (Statement of Facts/Paragraph 1), Complainant contends Respondent violated *N.J.S.A. 18A:12-24(b)* because he “used his position and title to obtain privilege (sic) over [Complainant] as the HIB complainant with the [ECS]” and because he “attempted to use privileged information, to benefit himself against [her] child.” Respondent counters that Complainant has “failed to allege any facts that would support the claims that” Respondent was “attempting to secure unwarranted privileges, advantages, or employment for him[self].” Respondent maintains that he was providing “accurate and public background information on the situation to the [ECS], which he had every right to do after Complainant raised a concern to the [ECS], and directly called into question the actions of [Respondent].” Respondent also notes that Complainant failed to indicate what “special privileges” he obtained (or attempted to obtain).

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.”

After review of the Complaint, the Commission finds that even if the facts as asserted are proven true by sufficient credible evidence, they would not support a finding that Respondent violated *N.J.S.A. 18A:12-24(b)*. More specifically, Complainant has failed to provide specific facts evidencing exactly how Respondent used his position as the District Superintendent/Chief School Administrator to secure an *unwarranted* privilege, advantage, or employment for himself. The sharing of information with the ECS does not suggest, let alone establish, the securing or attempted securing of an unwarranted privilege, advantage, or employment for Respondent *personally*. It is standard practice for the county office (ECS) to seek and receive information from a school district whenever a complaint or concern is raised by a parent. Therefore, the Commission finds that the alleged violation of *N.J.S.A. 18A:12-24(b)* in Count 1 (Statement of Facts/Paragraph 1) should be dismissed.

Complainant also argues Respondent violated *N.J.S.A. 18A:12-24(f)* because Respondent used “information that is not available to the general public” and, without her (Complainant’s) authorization, “initiated correspondence with [the ECS] to speak on a pending case that had nothing to do with the HIB complaint [she] was attempting to file.” Respondent submits that Complainant did not allege that Respondent, “his immediate family or a business or organization received a financial gain from any actions” described in the Complaint. According

to Respondent, he shared a matter with the ECS that was public record, and which he was allowed to share with the ECS. Respondent notes “even if he did lie, which he did not, and the allegation that he did is offensive, to assert that his actions rise to the level of an *N.J.S.A.* 18A:12-24(f) violation is patently absurd, and is exactly the type of allegation that should be sanctioned.”

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 the Complaint, the Commission finds that even if the facts as claimed are proven true by sufficient credible evidence, they would not support a finding that Respondent violated *N.J.S.A.* 18A:12-24(f). In its review, there are absolutely no facts and no evidence indicating how Respondent, as the Superintendent/Chief School Administrator, used any confidential information to secure financial gain for himself (personally), a business organization, or a member of his immediate family. Complainant has not offered any reasonable basis upon which to believe that Respondent, any purported business organization, or a family member stood to gain financially because he cooperated with and provided information regarding an investigation. As a result, the Commission finds that the alleged violation of *N.J.S.A.* 18A:12-24(f) in Count 1 (Statement of Facts/Paragraph 1) should be dismissed.

Accordingly, and granting all inferences in favor of the non-moving party (Complainant), the Commission has determined that the purported violations of *N.J.S.A.* 18A:12-24.1(a), *N.J.S.A.* 18A:12-24.1(b), *N.J.S.A.* 18A:12-24.1(c), *N.J.S.A.* 18A:12-24.1(e), and *N.J.S.A.* 18A:12-24.1(g) in Count 1 (Statement of Facts/Paragraph 1), and the alleged violations of *N.J.S.A.* 18A:12-24.1(a) in Count 2 (Statement of Facts/Paragraphs 2-3) are dismissed because the provisions of the Code do not apply to Respondent, the Superintendent/Chief School Administrator. The Commission has further determined that Complainant has not alleged facts sufficient to state a claim for a violation of *N.J.S.A.* 18A:12-24(b) and/or *N.J.S.A.* 18A:12-24(f) in Count 1 (Statement of Facts/Paragraph 1).

IV. Request for Sanctions

At its special meeting on February 4, 2022, 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 special meeting on February 25, 2022, 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 dismiss the purported violations of *N.J.S.A.* 18A:12-24.1(a), *N.J.S.A.* 18A:12-24.1(b), *N.J.S.A.* 18A:12-24.1(c), *N.J.S.A.* 18A:12-24.1(e), and *N.J.S.A.* 18A:12-24.1(g) in Count 1 (Statement of Facts/Paragraph 1), and the alleged violations of *N.J.S.A.* 18A:12-24.1(a) in Count 2 (Statement of Facts/Paragraphs 2-3) because the provisions of the Code do not apply to Respondent, the Superintendent/Chief School Administrator, and to grant the Motion to Dismiss as to the remaining allegations, namely as to *N.J.S.A.* 18A:12-24(b) and/or *N.J.S.A.* 18A:12-24(f) in Count 1 (Statement of Facts/Paragraph 1), because Complainant failed to plead sufficient, credible facts to support violations. 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: February 25, 2022

**Resolution Adopting Decision
in Connection with C56-21**

Whereas, at a special meeting on February 4, 2022, 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 a special meeting on February 4, 2022, the Commission discussed dismissing the purported violations of *N.J.S.A. 18A:12-24.1(a)*, *N.J.S.A. 18A:12-24.1(b)*, *N.J.S.A. 18A:12-24.1(c)*, *N.J.S.A. 18A:12-24.1(e)*, and *N.J.S.A. 18A:12-24.1(g)* in Count 1 (Statement of Facts/Paragraph 1), and the alleged violations of *N.J.S.A. 18A:12-24.1(a)* in Count 2 (Statement of Facts/Paragraphs 2-3) because the provisions of the Code of Ethics for School Board Members do not apply to Respondent, the Superintendent/Chief School Administrator; and

Whereas, at a special meeting on February 4, 2022, the Commission discussed granting the Motion to Dismiss as to the remaining allegations, namely as to *N.J.S.A. 18A:12-24(b)* and/or *N.J.S.A. 18A:12-24(f)* in Count 1 (Statement of Facts/Paragraph 1), because Complainant failed to plead sufficient, credible facts to support violations; and

Whereas, at a special meeting on February 4, 2022, the Commission discussed finding the Complaint not frivolous, and denying Respondent's request for sanctions; and

Whereas, at a special meeting on February 25, 2022, the Commission reviewed and voted to approve the within decision as accurately memorializing its actions/findings from its special meeting on February 4, 2022; 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 a special meeting on February 25, 2022.

Kathryn A. Whalen, Esq.
Director, School Ethics Commission