

Before the School Ethics Commission
Docket No.: C38-19
Decision on Motion to Dismiss

**Vincent and Deborah Esposito,
*Complainants***

v.

**Daniel Fishbein,
Ridgewood Board of Education, Bergen County,
*Respondent***

I. Procedural History

This matter arises from a Complaint that was filed on May 17, 2019, by Vincent Esposito (Mr. Esposito) and Deborah Esposito (Mrs. Esposito) (collectively referred to as Complainants), alleging that Daniel Fishbein (Respondent), an administrator employed by the Ridgewood Board of Education (Board), violated the School Ethics Act (Act), *N.J.S.A.* 18A:12-21 *et seq.* By correspondence dated May 23, 2019, Complainants were notified that the Complaint was deficient, and required amendment before the School Ethics Commission (Commission) could accept their filing. On June 7, 2019, Complainants 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. The Complaint alleges that Respondent violated *N.J.S.A.* 18A:12-24(a) and *N.J.S.A.* 18A:12-24(c) in Count 1; violated *N.J.S.A.* 18A:12-24(a), *N.J.S.A.* 18A:12-24(c), and *N.J.S.A.* 18A:12-24(d) in Count 2; violated *N.J.S.A.* 18A:12-24(a) and *N.J.S.A.* 18A:12-24(c) in Count 3; and violated *N.J.S.A.* 18A:12-24(c) in Count 4.

On June 10, 2019, the Complaint was served on Respondent, via regular and certified 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. On June 28, 2019, Respondent filed a Motion to Dismiss in Lieu of Answer (Motion to Dismiss), and also alleged that the Complaint is frivolous. On July 24, 2019, Complainants filed a response to the Motion to Dismiss and allegation of frivolous filing.

The parties were notified by correspondence dated August 20, 2019, that this matter would be placed on the Commission's agenda for its meeting on August 27, 2019, in order to make a determination regarding the Motion to Dismiss and allegation of frivolous filing. At its meeting on August 27, 2019, the Commission considered the filings in this matter and, at its meeting on September 24, 2019, the Commission voted to grant the Motion to Dismiss in its entirety because Complainants failed to plead sufficient, credible facts to support a finding that Respondent violated *N.J.S.A.* 18A:12-24(a) and *N.J.S.A.* 18A:12-24(c) as alleged in Count 1; violated *N.J.S.A.* 18A:12-24(a), *N.J.S.A.* 18A:12-24(c), and *N.J.S.A.* 18A:12-24(d) as argued in

Count 2; violated *N.J.S.A.* 18A:12-24(a) and *N.J.S.A.* 18A:12-24(c) as contended in Count 3; and/or violated *N.J.S.A.* 18A:12-24(c) as asserted in Count 4. The Commission also voted to find the Complaint not frivolous, and to deny Respondent's request for sanctions.

II. Summary of the Pleadings

A. *The Complaint*

In Count 1, Complainants assert that subsequent to the January 8, 2019, incident that occurred with Mr. Esposito, their children, and the building principal, Respondent (the Superintendent) "took immediate action" against Mr. Esposito by contacting the Ridgewood Police Department and sending a letter (the same day) to Mr. Esposito which stated, in part, "you are indefinitely not permitted on Ridgewood [School District] Property... ." Complainants assert this action by Respondent violated Mr. Esposito's "first amendment rights" because he would need to gain permission from Respondent in order to "vote, take [the children] to wrestling, coach their baseball team and utilize [the] towns recreational space which we pay taxes for, etc. ." Although Respondent amended the email, stating that Mr. Esposito could vote without permission, Complainants "do not trust this since no formal retraction has been sent" Complainants contend that Respondent's account of the events that occurred on January 8, 2019, was "inaccurate and one sided," because Respondent did not speak with Complainants or their children, and it was not until Complainants retained an attorney that a harassment, intimidation, and bullying (HIB) investigation was conducted. Complainants assert that Respondent violated *N.J.S.A.* 18A:12-24(a) and *N.J.S.A.* 18A:12-24(c) because he used "his position and authority to execute a one sided investigation and refused to acknowledge or investigate the abuse of two 3rd graders after multiple communications." As the Superintendent, Complainants argue it is "part of his duties to conduct and investigate all sides of an incident," and the "dismissal of [Complainants'] story provided an advantage to the Superintendent" and the school. Further, Respondent was "not concerned with the welfare of [the] children and reacted in a manner that was not measured or unbiased." According to Complainants, Respondent has not, to this day, heard Mrs. Esposito's account of the interaction that occurred with the building principal, or considered her (Mrs. Esposito's) version of the events that she heard (while on the telephone) on January 8, 2019.

In Count 2, Complainants state that on January 9, 2019, their children stayed home from school for several reasons, including that their children "were fearful to return" to school, and because they wanted to discuss the incident with the children and potentially find other school choices for their children. On this same day, Respondent sent an email to Complainants advising them, "We have compulsory education in NJ and it is the parents [sic] responsibility to get their children to school." Complainants maintain that because they did not want Respondent to take further action against them, Mrs. Esposito brought the children to school the next day. Upon her arrival at the school, Mrs. Esposito encountered the school security guard standing in the crosswalk, and the building principal on the "sidewalk in front of the school." Complainants note, "It quickly became evident to [Mrs. Esposito] why [Respondent] would not define 'school property' [because] she felt they were waiting and looking for [Mr. Esposito] to breach the ban imposed on him." Complainants contend Respondent violated *N.J.S.A.* 18A:12-24(a), 18A:12-24(c), and 18A:12-24(d) because when he "engaged the services" of the security guard he

“showed prejudice toward [their] family.” Respondent’s repeated dismissal of their claims and questions violated his duties as Superintendent, and “showed he did not act with an objective lens.” In addition, the manner in which he communicated with Complainants, as well as his direct actions, were in his best interests, and not in the best interest of their children. Finally, Respondent’s “lack of concern for [their] children’s welfare, his refusal to hear all sides of the incident, as well as to ensure his decisions and actions were in the best interest of all, has impacted [Complainants’] trust and confidence in [Respondent’s] ability to lead fairly and unbiasedly.”

In Count 3, Complainants assert that Respondent’s ban of Mr. Esposito was a “retaliatory act” for Mr. Esposito’s correspondence (ongoing for two years) with Respondent regarding the “security and vulnerability of the Ridgewood schools.” Complainants further assert that “when speaking to the Ridgewood Detective,” they were “told [Respondent’s] reaction was not the norm and it should have been a conversation across a conference table.” Complainants contend Respondent violated *N.J.S.A. 18A:12-24(a)* and *N.J.S.A. 18A:12-24(c)* because (1) his actions were “extreme and retaliatory in nature” and were deemed by the Ridgewood Police to be “not the norm”; (2) Mr. Esposito’s ban from District property was for Respondent’s “advantage and [was] in his own interest and benefit to silence [Mr. Esposito’s] concerns and to keep [him] off all school property and fields”; (3) Respondent’s actions on January 8, 2019, were influenced and guided by his (Respondent’s) feeling toward Mr. Esposito’s previous correspondence regarding school security; (4) Respondent “lost all measure, objectivity and abandoned good [judgment] to benefit himself”; and (5) Respondent’s actions “have undermined the communities [sic] willingness to speak up for what they believe in if it is different than the Superintendent[’]s view.”

In Count 4, Complainants assert that on April 2, 2019, they were contacted by the Assistant Superintendent, and she notified them that she was assigned to the HIB investigation by Respondent, and that she wanted to “set up an appointment” with Complainants’ children. Complainants contend that the Assistant Superintendent “began to educate [them] on the law,” and explained how the incident “did not constitute or qualify under HIB.” Complainants maintain that at the conclusion of the HIB investigation, they were informed by the Assistant Superintendent that there “were no witnesses” that saw the building principal put her hands on their child. Complainants responded that one of their other children (the child who was not the subject of the investigation) witnessed the incident, and “just because an adult did not see it does not mean it did not occur.” As a result, Complainants assert Respondent violated *N.J.S.A. 18A:12-24(c)* because a decision was made prior to the commencement of an investigation, which is “to the [Respondent’s] advantage and in the school[’]s interest.” Complainants also believe that “the direction of the investigation as well as the outcome is one in which suited and benefited [Respondent].” According to Complainants, such actions “discourage students and parents from speaking up for any wrong doing [sic] done to themselves or their children.”

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. Regarding Count 1, Respondent argues this allegation should be dismissed because Complainants “failed to allege facts, which if true, could establish a violation of the

[Act].” Respondent further argues that the Complaint does not contain any facts that support that he “acted in conflict with the proper discharge of his duties in the public interest, used his official position to secure unwarranted advantages for himself or his immediate family, or took private action that was of such a nature that it might compromise his objectivity or independence of judgment. Moreover, Respondent was not engaged in a business transaction or professional activity that was in substantial conflict with the proper discharge of his duties. Respondent maintains that Complainants are subjectively “questioning the execution of the investigation” that was conducted; however, “at all times [Respondent] acted appropriately” and Count 1 is “completely void of any facts” and “there is no basis in facts or law to support” Complainants’ allegations, and should be dismissed.

As for Count 2, Respondent argues Complainants’ claims “are false, at best.” Respondent further provides that surveillance video from the outside entrance of the school on January 10, 2019, contradicts Mrs. Esposito’s interpretation of the events that transpired while she was dropping her children off at school. Furthermore, Complainants did not offer any facts to support “the allegation that [Respondent] acted in conflict with the proper discharge of his duties in the public interest, used his official position to secure unwarranted advantages for himself or his immediate family, or took private action that was of such nature that it might compromise his objectivity or independence of judgment.” Because Complainants did not provide any facts to support their claims, Count 2 should be dismissed.

Regarding Count 3, Respondent argues that due to Mr. Esposito’s disruptive behavior on January 8, 2019, while in the main office, Mr. Esposito violated Policy 9202 (“Ridgewood’s Civility Policy”) and, therefore, Respondent informed Mr. Esposito he was no longer permitted on District property without Respondent’s prior permission. Respondent further argues that prohibiting Mr. Esposito from being present on District property does not support the allegations that Respondent “acted in conflict with the proper discharge of his duties in the public interest, used his official position to secure unwarranted advantages for himself or his immediate family, or took private action that was of such a nature that it might compromise his objectivity or independence of judgment.” Count 3, similar to Count 1 and Count 2, is “void of any facts” and there “is no basis in facts or law” to support the allegations in Count 3. As a result, it should be dismissed.

As to Count 4, Respondent maintains that he assigned the Assistant Superintendent to investigate the January 8, 2019, incident and, in addition to the building principal, nine (9) other witnesses were questioned, all of whom “asserted without reservation that [the building principal] never touched the children and never pointed at the children.” Witnesses further stated that the building principal “remained calm and used a firm tone and that her patience was admirable.” Because Count 4 lacks sufficient facts to support an allegation that Respondent violated *N.J.S.A.* 18A:12-24(c), it should be dismissed.

Finally, Respondent asserts the Complaint is frivolous because Complainants’ “total lack of evidence,” misinterpretation of the facts, as well as filing the Complaint in bad faith demonstrate that the Complaint is frivolous.

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

In response to the Motion to Dismiss and allegation of frivolous filing, Complainants again note counsel's "negligent and neglectful behavior" for sending the response to the incorrect address and, thereby, exposing their confidential information to a neighbor. Complainants again reaffirm the assertions made in the Complaint, and maintain that the Complaint was made in good faith, with pure intentions, and on behalf of their children.

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 (Complainants), 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 Complainants have alleged sufficient facts which, if true, could support a finding that Respondent violated *N.J.S.A. 18A:12-24(a)* and *N.J.S.A. 18A:12-24(c)* as alleged in Count 1; violated *N.J.S.A. 18A:12-24(a)*, *N.J.S.A. 18A:12-24(c)*, and *N.J.S.A. 18A:12-24(d)* as argued in Count 2; violated *N.J.S.A. 18A:12-24(a)* and *N.J.S.A. 18A:12-24(c)* as contended in Count 3; and/or violated *N.J.S.A. 18A:12-24(c)* as asserted in Count 4.

B. *Allegations of Prohibited Acts*

In their Complaint, Complainants allege that Respondent violated *N.J.S.A. 18A:12-24(a)* (Counts 1-3), *N.J.S.A. 18A:12-24(c)* (Counts 1-4), and *N.J.S.A. 18A:12-24(d)* (Count 2). 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;

c. No school official shall act in his official capacity in any matter where he, a member of his immediate family, or a business organization in which he has an interest, has a direct or indirect financial involvement that might reasonably be expected to impair his objectivity or independence of judgment. No school official shall act in his official capacity in any matter where he or a member of his immediate family has a personal involvement that is or creates some benefit to the school official or member of his immediate family;

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

Before more fully addressing the allegations in each Count, the Commission wishes to clarify that its jurisdiction is limited to enforcing the provisions of the Act, *N.J.S.A. 18A:12-21 et seq.*, a set of minimum ethical standards by which all school officials must abide. The Commission has jurisdiction only over matters arising under the Act, and it may not receive, hear, or consider any pleadings, motion papers, or documents of any kind relating to any matter that does not arise under the Act. *N.J.A.C. 6A:28-1.4(a)*.

With the above in mind, to the extent that Complainants seek a determination from the Commission that (1) the District and/or Respondent violated or failed to comply with a specific statute(s) or regulation(s) pertaining to the release of the documentary/video evidence and/or to the method (or timeliness) of how the HIB investigation was conducted; (2) that the District and/or Respondent violated or failed to comply with an applicable Board policy(ies) and/or regulation(s) relating to the issues set forth in the Complaint (including the banning of Mr. Esposito from District property); or (3) that the factual findings and/or conclusions rendered by the District with regard to the HIB investigation should be vacated or overturned, such determinations are outside the scope, authority, and jurisdiction of the Commission, but may be actionable in other venues.

Count 1

In Count 1, Complainants allege Respondent violated *N.J.S.A. 18A:12-24(a)* and *N.J.S.A. 18A:12-24(c)* because he used “his position and authority to execute a one sided investigation and refused to acknowledge or investigate the abuse of [their children] after multiple communications.” As the Superintendent, Complainants argue it is “part of his duties to conduct and investigate all sides of an incident,” and the “dismissal of [Complainants’] story provided an advantage to the Superintendent” and the school. Further, Respondent was “not concerned with the welfare of [the] children and reacted in a manner that was not measured or unbiased.” To this day, Complainants contend Respondent has not heard Mrs. Esposito’s account of what transpired on January 8, 2019. Respondent counters that Count 1 does not contain any facts that support that he “acted in conflict with the proper discharge of his duties in the public interest, used his official position to secure unwarranted advantages for himself or his immediate family, or took private action that was of such a nature that it might compromise his objectivity or independence of judgment. Moreover, Respondent was not engaged in a business transaction or professional activity that was in substantial conflict with the proper discharge of his duties. Instead, Respondent maintains that Complainants are subjectively “questioning the execution of the investigation” that was conducted.

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). First, there are no facts in Count 1 which suggest, or establish, that Respondent or a member of his immediate family had an “interest” in a business organization.¹ In addition, because the allegations in this Count relate to duties and responsibilities within the authority of the Superintendent, there are no facts indicating that Respondent engaged in a “business, transaction, or professional activity” that was in substantial conflict with the proper discharge of his duties as the Superintendent. Dissatisfaction with, or disapproval of, decisions and/or actions within the purview of Respondent cannot serve as the basis for a violation of *N.J.S.A.* 18A:12-24(a) based on the facts as presented in this Count. In this case, challenges to the determination(s) of an HIB investigation, including the method of and/or the timeliness of the investigation, are not appropriate for the Commission to resolve, but may be actionable in a more appropriate venue.

Furthermore, and as noted in their Complaint, Respondent delegated the authority to conduct the HIB investigation to the HIB Coordinator (the Assistant Superintendent) in the District, and she – *not Respondent* – contacted Complainants to discuss the investigation that she would (and did) conduct. In this way, Respondent’s actual involvement in the investigation was limited to delegating the authority to conduct the investigation to the Assistant Superintendent (as the HIB Coordinator) and to advise Complainants (and the Board) of the determination rendered based on the investigation. Complainants do not claim that Respondent did not have the authority for his actions, only that the investigation was flawed, and the determination was incorrect. Therefore, the Commission finds that the alleged violation of *N.J.S.A.* 18A:12-24(a) in Count 1 should be dismissed.

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

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(c). There is nothing in Count 1 to support any suggestion that Respondent or a member of his immediate family had a direct or indirect financial involvement in the investigation. There is also nothing which establishes that Respondent had a “personal” involvement in the investigation that created some benefit to him or to others. Respondent, as the Superintendent, is charged with a breadth of duties and responsibilities, and this necessarily includes assigning investigations to the appropriate administrators, rendering determinations regarding school-related matters as required by law, and advising the appropriate parties about such matters. Without sufficient facts to establish how Respondent’s involvement was anything other than routine, how he had a personal (not

¹ 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.

professional) involvement or interest, or how he benefited (personally), the Commission finds that the alleged violations of *N.J.S.A. 18A:12-24(c)* in Count 1 should be dismissed.

Count 2

In Count 2, and with regard to the presence of both the school security guard and the building principal at the student-drop off when Complainants' children returned to school, as well as Respondent's "dismissal" of their claims and the resulting investigation that was conducted, Complainants argue Respondent violated *N.J.S.A. 18A:12-24(a)*, *18A:12-24(c)*, and *18A:12-24(d)* because when he "engaged the services" of the security guard he "showed prejudice toward [their] family." Respondent's repeated dismissal of their claims and questions violated his duties as Superintendent and "showed he did not act with an objective lens." In addition, the manner in which he communicated with Complainants, as well as his direct actions, were in his best interests, not the best interest of their children. Finally, Respondent's "lack of concern for [their] children's welfare, his refusal to hear all sides of the incident, as well as to ensure his decisions and actions were in the best interest of all students, has impacted [Complainants'] trust and confidence in [Respondent's] ability to lead fairly and unbiasedly." Respondent counters that the surveillance video from the outside entrance of the school on January 10, 2019, contradicts Mrs. Esposito's interpretation of the events that transpired while she was dropping her children off at school. Furthermore, Complainants did not offer any facts to support "the allegation that [Respondent] acted in conflict with the proper discharge of his duties in the public interest, used his official position to secure unwarranted advantages for himself or his immediate family, or took private action that was of such nature that it might compromise his objectivity or independence of judgment."

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)*. Again, there are no facts in Count 2 which suggest, or establish, that Respondent or a member of his immediate family had an "interest" in a business organization. In addition, because the allegations in this Count relate to responsibilities within the authority of the Superintendent, and Complainants do not argue that Respondent exceeded the scope of his authority (only that he made an incorrect decision) there are no facts proffered in this Count indicating that Respondent engaged in a "business, transaction, or professional activity" that was in substantial conflict with the proper discharge of his duties as the Superintendent. Therefore, the Commission finds that the alleged violation of *N.J.S.A. 18A:12-24(a)* in Count 2 should be dismissed.

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

expected to impair his objectivity, or in a matter where he had a personal involvement that created some benefit to him, a member of his immediate family, or to “others.”

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(c). Again, there are insufficient facts offered in Count 2 to establish that Respondent or a member of his immediate family had a direct or indirect financial involvement in the issues discussed in Count 2. There is also nothing which establishes that Respondent had a “personal” involvement in these matters, or that his involvement created some identifiable benefit to him or to others. Respondent, as the Superintendent, is charged with a myriad of duties and responsibilities, including the assignment of staff to locations where student safety may be an issue, and the assignment of investigations to the appropriate administrators (the HIB Coordinator). Without sufficient facts to establish how Respondent’s involvement was anything other than routine, how he had a personal (not professional) involvement or interest, or how he benefited (personally), the Commission finds that the alleged violations of *N.J.S.A.* 18A:12-24(c) in Count 2 should be dismissed.

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

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(d). Other than taking issue with the measures taken by Respondent following the incident on January 8, 2019, and disagreeing with both the manner in which the investigation was conducted, as well as its findings, Complainants have not provided evidence that Respondent engaged in employment or service that might reasonably be expected to prejudice his independence of judgment in the exercise of his official duties. Respondent was clearly acting within the scope of his duties and responsibilities as the Superintendent, and not in any other capacity, when he made the decisions and took the actions objected to by Complainants. Disagreement with the determinations made and/or the actions taken by Respondent may be actionable in another venue, but are not properly decided by the Commission. Therefore, the Commission finds that the alleged violation of *N.J.S.A.* 18A:12-24(d) in Count 2 should be dismissed.

Count 3

In Count 3, and regarding Respondent’s decision to ban Mr. Esposito from District property, Complainants contend Respondent violated *N.J.S.A.* 18A:12-24(a) and *N.J.S.A.* 18A:12-24(c) because (1) his actions were “extreme and retaliatory in nature” and were deemed by the Ridgewood Police to be “not the norm”; (2) Mr. Esposito’s ban from District property was for Respondent’s “advantage and [was] in his own interest and benefit to silence [Mr. Esposito’s] concerns”; (3) Respondent’s actions on January 8, 2019, were influenced and guided by his (Respondent’s) feeling toward Mr. Esposito’s previous correspondence regarding school security; (4) Respondent “lost all measure, objectivity and abandoned good [judgment] to benefit

himself”; and (5) Respondent’s actions “have undermined the communities [sic] willingness to speak up for what they believe in if it is different than the Superintendent[’]s view.” Respondent counters that prohibiting Mr. Esposito from being present on District property – in accordance with an applicable Board policy – does not support the allegations that Respondent “acted in conflict with the proper discharge of his duties in the public interest, used his official position to secure unwarranted advantages for himself or his immediate family, or took private action that was of such a nature that it might compromise his objectivity or independence of judgment.”

In order 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.

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(a)*. Once again, there are no facts in Count 3 which suggest, or establish, that Respondent or a member of his immediate family had an “interest” in a business organization.

Furthermore, there is nothing in the Complaint which suggests that Respondent did not have the authority to ban Mr. Esposito from District property, such that his action in doing so was in substantial conflict with his duties as the Superintendent. Instead, the Complaint alleges that the decision by Respondent was “retaliatory” and “extreme” and, therefore, inappropriate. Whether the decision to ban Mr. Esposito following the January 8, 2019, incident violated the applicable Board policy is beyond the authority of the Commission to adjudicate, but may be actionable in another proceeding in the appropriate venue. As such, and based on the facts as presented, the Commission finds that the alleged violation of *N.J.S.A. 18A:12-24(a)* in Count 3 should be dismissed.

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

After review of 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)*. There are no facts offered in Count 3 to establish that Respondent or a member of his immediate family had a direct or indirect financial involvement in the decision to ban Mr. Esposito from District property. There are also no facts which establish that Respondent had a “personal” involvement in these matters, or that his involvement created some identifiable benefit to him or to others. Respondent, as the Superintendent, is charged with a multitude of duties and responsibilities, including enforcement of Board policies if he believes (regardless of whether correct) that the decision was warranted under the circumstances. Without sufficient facts to establish how Respondent’s involvement was anything other than routine, how he had a personal (not professional) involvement or interest, or how he

benefited (personally), the Commission finds that the alleged violations of *N.J.S.A. 18A:12-24(c)* in Count 3 should be dismissed. Once again, if Complainants believe that the decision rendered by Respondent violated Board policy, they are free to pursue such a claim in the appropriate venue.

Count 4

In Count 4, and with regard to the HIB investigation that was conducted, Complainants assert Respondent violated *N.J.S.A. 18A:12-24(c)* because a decision was made prior to the commencement of an investigation, which is “to the [Respondent’s] advantage and in the school[’]s interest.” Complainants also believe that “the direction of the investigation as well as the outcome is one in which suited and benefited [Respondent].” According to Complainants, such actions “discourage students and parents from speaking up for any wrong doing [sic] done to themselves or their children.” Respondent counters that he assigned the Assistant Superintendent to investigate the January 8, 2019, incident and everyone interviewed “asserted without reservation that [the building principal] never touched the children and never pointed at the children.” As a result, Count 4 is devoid of facts that would support the allegation that Respondent violated *N.J.S.A. 18A:12-24(c)*.

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

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(c)*. There are insufficient facts offered in Count 4 to establish that Respondent or a member of his immediate family had a direct or indirect financial involvement in the HIB investigation that was conducted especially since, as noted by Complainants, Respondent did not conduct the investigation. There are also no facts which establish that Respondent had a “personal” involvement in the investigation, or that his involvement created some identifiable benefit to him or to others. Respondent, as acknowledged by Complainants, delegated the authority to investigate the January 8, 2019, incident to the HIB Coordinator. Without sufficient facts to establish how Respondent’s involvement was anything other than routine, how he had a personal (not professional) involvement or interest, or how he benefited (personally), the Commission finds that the alleged violations of *N.J.S.A. 18A:12-24(c)* in Count 4 should be dismissed. Nonetheless, Complainants are free to appeal the determination from the HIB investigation and/or to question the method and manner of the investigation in the appropriate venue.

Accordingly, and granting all inferences in favor of the non-moving party (Complainants), the Commission has determined to ***grant*** the Motion to Dismiss in its entirety because Complainants failed to plead sufficient, credible facts to support a finding that Respondent violated *N.J.S.A. 18A:12-24(a)* and *N.J.S.A. 18A:12-24(c)* as alleged in Count 1; violated *N.J.S.A. 18A:12-24(a)*, *N.J.S.A. 18A:12-24(c)*, and *N.J.S.A. 18A:12-24(d)* as argued in

Count 2; violated *N.J.S.A.* 18A:12-24(a) and *N.J.S.A.* 18A:12-24(c) as contended in Count 3; and/or violated *N.J.S.A.* 18A:12-24(c) as asserted in Count 4.

IV. Request for Sanctions

At its meeting on August 27, 2019, the Commission considered Respondent's request that the Commission find the Complaint frivolous, and impose sanctions pursuant to *N.J.S.A.* 18A:12-29(e). Despite Respondent's argument, the Commission cannot find evidence that might show that Complainants 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 Complainants 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 September 24, 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 (Complainants), the Commission voted to **grant** the Motion to Dismiss in its entirety because Complainants failed to plead sufficient, credible facts to support a finding that Respondent violated *N.J.S.A.* 18A:12-24(a) and *N.J.S.A.* 18A:12-24(c) as alleged in Count 1; violated *N.J.S.A.* 18A:12-24(a), *N.J.S.A.* 18A:12-24(c), and *N.J.S.A.* 18A:12-24(d) as argued in Count 2; violated *N.J.S.A.* 18A:12-24(a) and *N.J.S.A.* 18A:12-24(c) as contended in Count 3; and/or violated *N.J.S.A.* 18A:12-24(c) as asserted in Count 4. 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 Complainants 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: September 25, 2019

**Resolution Adopting Decision
in Connection with C38-19**

Whereas, at its meeting on August 27, 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 August 27, 2019, the Commission discussed granting the Motion to Dismiss in its entirety for failure to plead sufficient, credible facts to support the allegations that Respondent violated *N.J.S.A. 18A:12-24(a)* and *N.J.S.A. 18A:12-24(c)* as alleged in Count 1; violated *N.J.S.A. 18A:12-24(a)*, *N.J.S.A. 18A:12-24(c)*, and *N.J.S.A. 18A:12-24(d)* as argued in Count 2; violated *N.J.S.A. 18A:12-24(a)* and *N.J.S.A. 18A:12-24(c)* as contended in Count 3; and/or violated *N.J.S.A. 18A:12-24(c)* as asserted in Count 4; and

Whereas, at its meeting on August 27, 2019, the Commission discussed finding the Complaint not frivolous, and denying Respondent's request for sanctions; and

Whereas, at its meeting on September 24, 2019, the Commission reviewed and voted to approve the within decision as accurately memorializing its actions/findings from its meeting on August 27, 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 September 24, 2019.

Kathryn A. Whalen, Director
School Ethics Commission