

***Before the School Ethics Commission
Docket No.: C83-20
Decision on Motion to Dismiss***

**Aaron Cooper,
Complainant**

v.

**Wassim Muhammad,
Camden City Board of Education, Camden County,
Respondent**

I. Procedural History

This matter arises from a Complaint that was filed on November 25, 2020, by Aaron Cooper (Complainant), alleging that Wassim Muhammad (Respondent), a member of the Camden City Advisory Board of Education (Advisory Board or Board), violated the School Ethics Act (Act), *N.J.S.A.* 18A:12-21 *et seq.*¹ By correspondence dated December 28, 2020, January 21, 2021, and February 5, 2021, Complainant was notified that the Complaint was deficient, and required amendment before the School Ethics Commission (Commission) could accept his filing.² On February 19, 2021, and after filing several other deficient filings, 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 Complaint avers that Respondent violated “*N.J.S.A.* 18A:12-24.1(a) through (j)” (Count 1 and Count 3), and violated “*N.J.S.A.* 18A:12-24(a) through (k)” (Count 2).

On February 22, 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.³ On March 17, 2021, Respondent filed a Motion to Dismiss in Lieu of Answer (Motion to Dismiss), and on April 1, 2021, Complainant filed a response to the Motion to Dismiss.

The parties were subsequently notified by correspondence dated April 19, 2021, that this matter would be placed on the Commission’s agenda for its meeting on April 27, 2021, in order to make a determination regarding the Motion to Dismiss. At its meeting on April 27, 2021, the Commission considered the filings in this matter and, at its meeting on May 25, 2021, the Commission voted to grant the Motion to Dismiss in its entirety because Complainant failed to

¹ Complainant’s filing was postmarked November 25, 2020, but was not physically received by the School Ethics Commission until December 22, 2020.

² In each letter from the Commission, Complainant was advised that he needed to provide specific facts to support each alleged violation of the Act.

³ Due to the ongoing Coronavirus (COVID-19) pandemic, service of process was effectuated by the Commission through electronic transmission only.

plead sufficient, credible facts to support a finding that Respondent violated *N.J.S.A.* 18A:12-24.1(a) through *N.J.S.A.* 18A:12-24.1(j) in Count 1 and/or Count 3, and/or violated *N.J.S.A.* 18A:12-24(a) through *N.J.S.A.* 18A:12-24(k) in Count 2.

II. Summary of the Pleadings

A. *The Complaint*

In Count 1 of his Complaint, Complainant states that, on March 13, 2020, Respondent, as “a sitting member of the Camden City ... Advisory Board [(Advisory Board)] and as a candidate for the [Advisory Board],” received funds from the Camden City School District’s (District) “COVID-19 funding” for his private school, Muhammad University of Islam No. 20.” Based on these facts, and because Respondent is a member of the Advisory Board and has taken funds allocated for the District “for personal gain,” Complainant asserts that Respondent has violated “*N.J.S.A.* 18A:12-24.1(a) through (j).”

In Count 2 of his Complaint, Complainant states that, during the November 2020, Advisory Board election cycle, and from October 2020 through November 4, 2020, Respondent (along with others) was endorsed by the Camden County Democratic Committee (CCDC) and by the Sheriff. The election, according to Complainant, “was supposed to be a no[n] partisan election” but, nonetheless, Respondent (and others) received funds directly from the CCDC, and had “promotional materials stating” he was endorsed by both the CCDC and the Sheriff. Complainant argues that Respondent “should not have been able to run for the non-partisan election for the [Advisory Board] and been sponsored by the [CCDC] which unjustly was able to tip the election process in his favor.” As such, Complainant asserts that Respondent’s conduct violated “*N.J.S.A.* 18A:12-24(a) through (k).”

In Count 3 of his Complaint, Complainant states that being the Advisory Board President and “overseeing the funds coming into and out of the” District, places the private school that is overseen by Respondent “at an unfair advantage to receive special treatment in terms of how funds are allocated and with having access to information that others may not be privy to, and violates the trust of the people and community that he is supposed to serve.” Therefore, Complainant asserts that Respondent’s conduct, in March 2020 in particular, violated “*N.J.S.A.* 18A:12-24.1(a) through (j).”

B. *Motion to Dismiss*

Following receipt of the Complaint, Respondent filed a Motion to Dismiss and argues that Complainant has failed to plead sufficient, credible facts to support a finding that Respondent violated any provision of the Act, and simply lists all provisions of *N.J.S.A.* 18A:12-24 (Prohibited Acts) and *N.J.S.A.* 18A:12-24.1 (the Code).

In his preliminary “Statement of Facts,” Respondent notes that the District is under “full State intervention” and, therefore, the Advisory Board “continues in place, but only serves in an advisory capacity (*i.e.*, board members do not have voting rights).” In addition, following the passage of the Coronavirus Aid, Relief, and Economic Security Act (CARES Act), the Elementary Secondary School Emergency Relief Fund (ESSER) was established, and includes funding for local education agencies (LEAs). In addition, the U.S. Department of Education

“determined that LEAs that receive funds from ESSER must provide equitable services to students and teachers in nonpublic schools.” More specifically, the “LEA in which a nonpublic school is located is responsible for providing equitable services to students and teachers in the [nonpublic] school,” but the New Jersey Department of Education (NJDOE) is responsible for calculating (based on various factors) the amount of funds that nonpublic schools will receive to provide such equitable services. In addition, at the Advisory Board’s June 16, 2020, meeting, “the District granted permission to apply for and accept funds from the NJDOE for the CARES Act” Finally, Muhammad University of Islam No. 20 is a not-for-profit nonpublic school that is located “within the parameters of the District.”

With the above in mind, and regarding the allegations in Count 1 *and* Count 3 regarding the CARES act monies allocated to Muhammad University of Islam No. 20, Respondent argues that Complainant failed to specify which provisions of the Code of Ethics for School Board Members (Code) Respondent allegedly violated, and merely listed all of the provisions of the Code. In addition, the Complaint does not set forth any of the “specific, factual evidence” that is required by *N.J.A.C.* 6A:28-6.4 to establish violations of the Code in either Count 1 and/or Count 3. Further, “in order for a board member to violate the Code ..., every provision requires the board member to have taken an affirmative action in order for there to be a violation.” However, in this case, the NJDOE “calculated and allocated the share of the CARES Act funds that the non-public school, Muhammad University of Islam No. 20, was going to receive based on enrollment numbers and the fact that it is located within the parameters of the District”; the District solely accepted the CARES Act funds from the NJDOE and “had no role in the decision regarding the funds disbursed to Muhammad University of Islam No. 20”; and even if the District had a role, “*which it did not,*” because the Advisory Board is advisory only, Respondent “would not have even been able to vote on the matter.”

As for the allegations in Count 2, Respondent again argues that Complainant failed to specify, “which provision of the Act” Respondent allegedly violated, and simply lists all of the provisions in *N.J.S.A.* 18A:12-24 (Prohibited Acts). According to Respondent, the only “somewhat relevant” provision is *N.J.S.A.* 18A:12-24(e), but this provision “specifically states that it ‘*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.” In this regard, Complainant “has not provided any evidence that the political contribution was given to influence Respondent in the discharge of his official duties or that Respondent had knowledge or reason to believe that it was given for such reasons.”

For all of the foregoing reasons, Respondent respectfully requests that the Motion to Dismiss be granted, and the Complaint be dismissed with prejudice.

C. *Response to Motion to Dismiss*

In response to the Motion to Dismiss, Complainant argues that it (the Motion to Dismiss) “further highlighted the initial points presented ... as there being a conflict of interest” with Respondent serving on the Advisory Board while also receiving District funds for his “not for profit” school, Muhammad University of Islam No. 20. According to Complainant, the

“individual listed as the director of the school” is “one of [Respondent’s] wives,” but other information (including on social media) shows that Respondent is actually the director of the school. In his filing, Respondent did not deny or disprove that he collected the funds “but more so highlighted that the funds were received for the school.”

Complainant continues the State of New Jersey and the District have “rules pertaining to impropriety and conflict of interests that must be followed,” and “[w]ith the issues of Board Members receiving funds from the [D]istrict either for themselves or for family members it opens the doors for improper behavior.” In addition, “[t]he lack of community trust and a possible criminal action of an elected school Board member is of great concern regardless of where the money comes from or [is] funneled through ...,” and “[n]o one should line their pockets with federal or state funds that they can benefit [from] or use [their] position to gain inside benefits that the community or unaware partners would not have privilege to.”

Complainant concludes by stating it is his belief that Respondent “has used his position as a board member that received, viewed and gained knowledge of grants, policy, state, and federal funds to gain inside information to benefit [him]self and others.”

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:12-24.1(a)* through *N.J.S.A. 18A:12-24.1(j)* in Count 1 and/or Count 3, and/or violated *N.J.S.A. 18A:12-24(a)* through *N.J.S.A. 18A:12-24(k)* in Count 2.

B. Alleged Code Violations

In Count 1 and Count 3, Complainant argues that Respondent violated *N.J.S.A. 18A:12-24.1(a)* through *N.J.S.A. 18A:12-24.1(j)*. These provisions of the Code provide:

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

- d. I will carry out my responsibility, not to administer the schools, but, together with my fellow board members, to see that they are well run.
- 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.
- h. I will vote to appoint the best qualified personnel available after consideration of the recommendation of the chief administrative officer.
- i. I will support and protect school personnel in proper performance of their duties.
- j. I will refer all complaints to the chief administrative officer and will act on the complaints at public meetings only after failure of an administrative solution.

Count 1

More specifically, Complainant claims that Respondent violated *N.J.S.A.* 18A:12-24.1(a) through *N.J.S.A.* 18A:12-24.1(j) because, on March 13, 2020, Respondent received funds from the District’s “COVID-19 funding” for his private school (Muhammad University of Islam No. 20), is a member of the Advisory Board, and has taken funds allocated for the District “for personal gain.”

Respondent counters the Complaint does not set forth any of the “specific, factual evidence” that is required by *N.J.A.C.* 6A:28-6.4 to establish violations of the Code in Count 1; Respondent did not take any affirmative action relative to the allegations in the Complaint; the NJDOE “calculated and allocated the share of the CARES Act funds that ... Muhammad University of Islam No. 20, was going to receive”; the District solely accepted the CARES Act funds from the NJDOE and “had no role in the decision regarding the funds disbursed to Muhammad University of Islam No. 20”; and even if the District had a role, Respondent “would not have even been able to vote on the matter.”

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:12-24.1(a) through *N.J.S.A.* 18A:12-24.1(j). Other than averring, “Respondent received funds from the District’s ‘COVID-19’ funding” for Muhammad University of Islam No. 20, Complainant failed to provide a copy of a final decision from any court of law or administrative agency of this State demonstrating that Respondent failed to enforce all laws, rules and regulations of the State Board of Education, and/or court orders

pertaining to schools or that Respondent brought about changes through illegal or unethical procedures (to prove a violation of *N.J.S.A. 18A:12-24.1(a)*); the Complaint failed to include evidence that Respondent willfully made a decision contrary to the educational welfare of children, or evidence that Respondent took deliberate action to obstruct the programs and policies designed to meet the individual needs of all children, regardless of their ability, race, color, creed or social standing (to sustain a violation of *N.J.S.A. 18A:12-24.1(b)*); does not include evidence that Respondent took board action to effectuate policies and plans without consulting those affected by such policies and plans, or took action that was unrelated to Respondent's duty to (i) develop the general rules and principles that guide the management of the school district or charter school; (ii) formulate the programs and methods to effectuate the goals of the school district or charter school; or (iii) ascertain the value or liability of a policy (to establish a violation of *N.J.S.A. 18A:12-24.1(c)*); and lacks evidence that Respondent gave a direct order to school personnel or became directly involved in activities or functions that are the responsibility of school personnel or the day-to-day administration of the school district or charter school (to support a violation of *N.J.S.A. 18A:12-24.1(d)*). See *N.J.A.C. 6A:28-6.4(a)(1)* through *N.J.A.C. 6A:28-6.4(a)(4)*.

The Complaint is also devoid of evidence that Respondent made personal promises or took action beyond the scope of his duties such that, by its nature, had the potential to compromise the board (to substantiate a violation of *N.J.S.A. 18A:12-24.1(e)*); does not have evidence that Respondent took action on behalf of, or at the request of, a special interest group or persons organized and voluntarily united in opinion and who adhere to a particular political party or cause; or evidence that Respondent used the schools in order to acquire some benefit for himself, a member of his immediate family or a friend (to prove a violation of *N.J.S.A. 18A:12-24.1(f)*); lacks evidence that Respondent took action to make public, reveal or disclose information that was not public under any laws, regulations or court orders of this State, or information that was otherwise confidential in accordance with board policies, procedures or practices, and failed to include evidence that substantiates the inaccuracy of the information provided by Respondent and evidence that establishes that the inaccuracy was other than reasonable mistake or personal opinion or was not attributable to developing circumstances (to sustain a violation of *N.J.S.A. 18A:12-24.1(g)*); failed to include evidence that Respondent acted on a personnel matter without a recommendation of the chief administrative officer (to establish a violation of *N.J.S.A. 18A:12-24.1(h)*); does not have evidence that Respondent took deliberate action which resulted in undermining, opposing, compromising or harming school personnel in the proper performance of their duties (to support a violation of *N.J.S.A. 18A:12-24.1(i)*); and lacks evidence that Respondent acted on or attempted to resolve a complaint, or conducted an investigation or inquiry related to a complaint (i) prior to referral to the chief administrative officer, or (ii) at a time or place other than a public meeting and prior to the failure of an administrative solution (to substantiate a violation of *N.J.S.A. 18A:12-24.1(j)*). See *N.J.A.C. 6A:28-6.4(a)(5)* through *N.J.A.C. 6A:28-6.4(a)(10)*.

Therefore, the Commission finds that the alleged violations of *N.J.S.A. 18A:12-24.1(a)* through *N.J.S.A. 18A:12-24.1(j)* in Count 1 should be dismissed.

Count 3

Complainant further contends that, in violation of *N.J.S.A.* 18A:12-24.1(a) through *N.J.S.A.* 18A:12-24.1(j), being the Advisory Board President and “overseeing the funds coming into and out of the” District places the private school that is overseen by Respondent “at an unfair advantage to receive special treatment in terms of how funds are allocated and with having access to information that others may not be privy to, and violates the trust of the people and community that he is supposed to serve.”

Respondent counters the Complaint does not set forth any of the “specific, factual evidence” that is required by *N.J.A.C.* 6A:28-6.4 to establish violations of the Code in Count 3; Respondent did not take any affirmative action relative to the allegations in the Complaint; the NJDOE “calculated and allocated the share of the CARES Act funds that ... Muhammad University of Islam No. 20, was going to receive; the District solely accepted the CARES Act funds from the NJDOE and “had no role in the decision regarding the funds disbursed to Muhammad University of Islam No. 20”; and even if the District had a role, Respondent “would not have even been able to vote on the matter.”

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:12-24.1(a) through *N.J.S.A.* 18A:12-24.1(j). Once again, Complainant simply cites Respondent’s position (and leadership role) on the Advisory Board as the basis, *without any other* corroborating factual support or evidence, for Muhammad University of Islam No. 20 receiving “an unfair advantage” by way of “special treatment.” However, and as with the alleged violations of the Code in Count 1, Complainant needed to provide the factual evidence required by *N.J.A.C.* 6A:28-6.4(a)(1) through *N.J.A.C.* 6A:28-6.4(a)(10). Without the necessary factual evidence, and because it is constrained by the allegations as pled in the Complaint, the Commission finds that the alleged violations of *N.J.S.A.* 18A:12-24.1(a) through *N.J.S.A.* 18A:12-24.1(j) in Count 3 should be dismissed.

C. Alleged Prohibited Acts Violations

In Count 2, Complainant asserts that Respondent violated *N.J.S.A.* 18A:12-24(a) through *N.J.S.A.* 18A:12-24(k). 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;

- 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;
- 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;
- h. No school official shall be deemed in conflict with these provisions if, by reason of his participation in any matter required to be voted upon, no material or monetary gain accrues to him as a member of any business, profession, occupation or group, to any greater extent than any gain could reasonably be expected to accrue to any other member of that business, profession, occupation or group;
- i. No elected member shall be prohibited from making an inquiry for information on behalf of a constituent, if no fee, reward or other thing of value is promised to, given to or accepted by the member or a member of his immediate family, whether directly or indirectly, in return therefor;

- j. Nothing shall prohibit any school official, or members of his immediate family, from representing himself, or themselves, in negotiations or proceedings concerning his, or their, own interests; and
- k. Employees of the New Jersey School Boards Association (NJSBA) shall not be precluded from providing assistance, in the normal course of their duties, to boards of education in the negotiation of a collective bargaining agreement regardless of whether a member of their immediate family is a member of, or covered by, a collective bargaining agreement negotiated by a Statewide union with which a board of education is negotiating.

Count 2

More specifically, Complainant alleges that Respondent violated ***N.J.S.A. 18A:12-24(a) through N.J.S.A. 18A:12-24(k)*** because, during the November 2020 Advisory Board election cycle, and from October 2020 through November 2020 in particular, Respondent was endorsed by the CCDC and by the Sheriff. Although the election “was supposed to be a no[n] partisan election,” Respondent received funds directly from the CCDC, and had “promotional materials stating” he was endorsed by both the CCDC and the Sheriff. As such, Complainant submits that Respondent violated *N.J.S.A. 18A:12-24(a) through N.J.S.A. 18A:12-24(k)*.

Respondent counters that Complainant failed to specify “which provision of the Act” Respondent allegedly violated. According to Respondent, the only “somewhat relevant” provision is *N.J.S.A. 18A:12-24(e)*, but this provision “specifically states that it ‘*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.” In this regard, Complainant “has not provided any evidence that the political contribution was given to influence Respondent in the discharge of his official duties or that Respondent had knowledge or reason to believe that it was given for such reasons.”

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) through N.J.S.A. 18A:12-24(k)*.

Regarding the purported violation of ***N.J.S.A. 18A:12-24(a)***, there is no 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. Respondent’s ownership of and/or affiliation with Muhammad University of Islam No. 20 does not, in and of itself, substantially conflict with his duties as a member of the Advisory Board. However, and as further detailed below, there are precautions that Respondent must take in order to avoid a conflict of interest (actual or perceived) which violates the Act.

As for the suspected violation of ***N.J.S.A. 18A:12-24(b)***, there is an absence of 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.” Merely citing to Respondent’s involvement with Muhammad University of Islam No. 20 is insufficient

to establish that he used or attempted to use his position on the Advisory Board to secure an unwarranted privilege, advantage, or employment for anyone.

Concerning the professed violation of *N.J.S.A. 18A:12-24(c)*, there is a dearth of factual support 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.” Again, a blanket referral to Respondent’s affiliation with Muhammad University of Islam No. 20 does not prove that he acted in any matter, which would violate this provision of the Act.

Regarding the purported violation of *N.J.S.A. 18A:12-24(d)*, there is no 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. Respondent’s involvement in a nonpublic school, without more, does not equate to an inability to exercise independence of judgment.

As for the suspected violation of *N.J.S.A. 18A:12-24(e)*, there is an absence of evidence that Respondent, a member of his immediate family, or a business organization in which he has an interest, solicited or accepted a 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 as a member of the Board. Even if Respondent may have accepted monetary donations/contributions from individuals or entities who wanted to support his candidacy, including the CCDC and/or the Sheriff, without the predicate factual averment(s) that such donations were given for the purpose of influencing Respondent in the exercise of his official duties as an Advisory Board member, a violation cannot be sustained.

Concerning the professed violation of *N.J.S.A. 18A:12-24(f)*, there is a dearth of factual support 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. In fact, the circumstances under which any such wrongdoing may have occurred do not appear in the Complaint, to any extent.

Regarding the purported violation of *N.J.S.A. 18A:12-24(g)*, there is no evidence that Respondent, or a business organization in which he has an interest, represented a person or party other than the Board in connection with a cause, proceeding, application, or other matter pending before the Board on which he serves. In fact, the Complaint does not indicate the cause, proceeding, application, or other matter pending before the Advisory Board in which Respondent allegedly represented an entity (or person) other than the Advisory Board.

As for the suspected violation of *N.J.S.A. 18A:12-24(h)*, this provision clarifies that a school official shall not be deemed in conflict with the Act if, by reason of his participation in a matter required to be voted upon, no material or monetary gain accrues to him as a member of a business, profession, occupation, or group, to any greater extent than any gain could reasonably

be expected to accrue to any other member of that business, profession, occupation, or group. However, a school official cannot violate this provision of the Act, and instead can rely upon it as a basis to argue that he did not violate the Act.

Concerning the professed violation of *N.J.S.A. 18A:12-24(i)*, there is a dearth of factual support that Respondent made an inquiry for information on behalf of a constituent, and that a fee, reward, or other thing of value was promised to, given to, or accepted by Respondent or a member of his immediate family, whether directly or indirectly, in return for Respondent's inquiry. In this regard, the Complaint does not identify any inquiry that Respondent may have made, does not indicate the information Respondent may have sought for another, and does not indicate, or even suggest, that there was any quid pro quo for the inquiry.

Turning to *N.J.S.A. 18A:12-24(j)*, this provision does not prohibit any specific conduct/behavior by a school official, but rather confirms that, in certain circumstances, a school official, and/or members of his immediate family, may represent himself, or themselves, in negotiations or proceedings concerning his, or their, own interests. In a similar vein, *N.J.S.A. 18A:12-24(k)* exempts NJSBA employees from violating the Act if, in the normal course of their duties, they provide assistance to boards of education in the negotiation of collective bargaining agreements, regardless of whether they may have an immediate family member who is a member of, or is governed by, the terms of a collective bargaining agreement negotiated by the same Statewide union with which a board of education may be negotiating. In short, neither *N.J.S.A. 18A:12-24(j)* nor *N.J.S.A. 18A:12-24(k)* can serve as a colorable basis for violations of the Act and, instead, codify the factual circumstances under which clearly prescribed behavior is not violative of the Act. However, those factual circumstances are not present here.

As such, and for the reasons set forth above, the Commission finds that the alleged violations of *N.J.S.A. 18A:12-24(a)* through *N.J.S.A. 18A:12-24(k)* in Count 2 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:12-24.1(a)* through *N.J.S.A. 18A:12-24.1(j)* in Count 1 and/or Count 3, and/or violated *N.J.S.A. 18A:12-24(a)* through *N.J.S.A. 18A:12-24(k)* in Count 2.

Notwithstanding the Commission's determination as set forth herein, the Commission notes that the Board's status as an Advisory Board, which includes the limited ability of the Board and its individual members to exercise independent decision-making, weighed heavily in the Commission's analysis. Nonetheless, to the extent that a specific matter or issue concerning Muhammad University of Islam No. 20 is pending before the Board, and is a matter or issue with which the Board can (or may) take action (affirmatively or negatively), Respondent **must** recuse himself from any and all discussions and votes. Furthermore, if and when the Board is in a position to make decisions - not just fiscal decisions - which can directly or indirectly impact Muhammad University of Islam No. 20 and/or its students or personnel, Respondent **must** recuse himself from any and all discussions and votes. Furthermore, Respondent is strongly encouraged to speak with Board counsel regarding the appropriateness of his involvement in any matter which could, whether directly or indirectly, impact Muhammad University of Islam No. 20.

Respondent's failure to adhere to this commendation may cause him to violate the Act, and to be subject to penalty, up to and including removal.

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:12-24.1(a) through *N.J.S.A.* 18A:12-24.1(j) in Count 1 and/or Count 3, and/or violated *N.J.S.A.* 18A:12-24(a) through *N.J.S.A.* 18A:12-24(k) in Count 2.

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: May 25, 2021

***Resolution Adopting Decision
in Connection with C83-20***

Whereas, at its meeting on April 27, 2021, 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 April 27, 2021, 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:12-24.1(a) through *N.J.S.A.* 18A:12-24.1(j) in Count 1 and/or Count 3, and/or violated *N.J.S.A.* 18A:12-24(a) through *N.J.S.A.* 18A:12-24(k) in Count 2; and

Whereas, at its meeting on May 25, 2021, the Commission reviewed and voted to approve the within decision as accurately memorializing its actions/findings from its meeting on April 27, 2021; 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 May 25, 2021.

Kathryn A. Whalen, Director
School Ethics Commission