

Before the School Ethics Commission
Docket No.: C91-21
Decision on Motion to Dismiss

Martin B. Welzmuller,
Complainant

v.

Antoine Gayles,
Mount Olive Township School District Board of Education, Morris County,
Respondent

I. Procedural History

The above-captioned matter arises from a Complaint that was filed on December 12, 2021, by Martin B. Welzmuller (Complainant) alleging that Antoine Gayles (Respondent), a member of the Mount Olive Township School District Board of Education (Board), violated the School Ethics Act (Act), *N.J.S.A.* 18A:12-21 *et seq.* By correspondence dated December 20, 2021, Complainant was notified that the Complaint was deficient, and required amendment before the School Ethics Commission (Commission) could accept his filing. On December 27, 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 Complaint avers that Respondent violated *N.J.S.A.* 18A:12-24(b), *N.J.S.A.* 18A:12-24(c), and *N.J.S.A.* 18A:12-24(f), as well as *N.J.S.A.* 18A:12-24.1(e), *N.J.S.A.* 18A:12-24.1(f), *N.J.S.A.* 18A:12-24.1(g), and *N.J.S.A.* 18A:12-24.1(h) of the Code of Ethics for School Board Members (Code) in Counts 1–2.

On January 5, 2022, 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 February 8, 2022, Respondent filed a Motion to Dismiss in Lieu of Answer (Motion to Dismiss), and also alleged that the Complaint is frivolous. On March 14, 2022, Complainant filed a response to the Motion to Dismiss and allegation of frivolous filing.

The parties were notified by correspondence dated April 18, 2022, that this matter would be discussed by the Commission at its meeting on April 26, 2022, in order to make a determination regarding the Motion to Dismiss and allegation of frivolous filing. Following its discussion on April 26, 2022, the Commission adopted a decision at its meeting on May 24, 2022, finding that the Complaint (and Count 2 in particular) was timely filed, but granting the Motion to Dismiss in its entirety because Complainant failed to plead sufficient, credible facts to

¹ As a result of the ongoing Coronavirus (COVID-19) pandemic, and the implementation of electronic filing, service of process was effectuated by the Commission through electronic transmission only.

support a finding that Respondent violated *N.J.S.A. 18A:12-24(b)*, *N.J.S.A. 18A:12-24(c)*, and *N.J.S.A. 18A:12-24(f)*, as well as *N.J.S.A. 18A:12-24.1(e)*, *N.J.S.A. 18A:12-24.1(f)*, *N.J.S.A. 18A:12-24.1(g)*, and/or *N.J.S.A. 18A:12-24.1(h)* in Count 1 and/or Count 2. The Commission also adopted a decision finding the Complaint not frivolous, and denying Respondent’s request for sanctions.

II. Summary of the Pleadings

A. *The Complaint*

In Count 1, Complainant states that on September 21, 2021, he submitted several Open Public Records Act (OPRA) requests regarding Respondent and another member of the Board to the Custodian of Records. According to Complainant, the requests “were only sent to the [Board] Custodian of [R]ecords . . . and were addressed in a closed-door session [Board] meeting, they weren’t disclosed to the residence of [the Mount Olive School District (District)] due to confidential matters.”

Despite the “confidential” nature of the requests, Respondent “leaked” information from confidential closed session Board meetings to a reporter “in an attempt to try and intimidate residents during the OPRA request process and to bypass the proper procedures.” According to Complainant, “[a]t no time was [his] name ever disclosed at a [Board] meeting, and only the [Board] knew who requested the OPRA,” and no one submitted an OPRA request for his OPRA request. Further, the reporter told Complainant that Respondent gave her (the reporter) Complainant’s name “so she could bypass the OPRA request process in order to publish her [article].” Based on these facts, Complainant alleges that Respondent violated *N.J.S.A. 18A:12-24(b)*, *N.J.S.A. 18A:12-24(c)*, *N.J.S.A. 18A:12-24(f)*, *N.J.S.A. 18A:12-24.1(e)*, *N.J.S.A. 18A:12-24.1(f)*, *N.J.S.A. 18A:12-24.1(g)*, and *N.J.S.A. 18A:12-24.1(h)*.

In Count 2, Complainant states that from “July 2017 [to] current,” Respondent has violated the District’s nepotism policy, and has received a financial/economic benefit by approving the payroll for *all* District employees, which includes Respondent’s spouse. Complainant contends the only time that the Interim Executive County Superintendent (ECS) ever approved the employment of Respondent’s spouse was in 2017 (when she was recommended “as the best qualified” from a “shortage of high[-]quality people”). As such, Complainant contends Respondent violated *N.J.S.A. 18A:12-24(b)*, *N.J.S.A. 18A:12-24(c)*, *N.J.S.A. 18A:12-24(f)*, *N.J.S.A. 18A:12-24.1(e)*, *N.J.S.A. 18A:12-24.1(f)*, *N.J.S.A. 18A:12-24.1(g)*, and *N.J.S.A. 18A:12-24.1(h)*.

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. In support of his filing, Respondent offers the following additional facts:

- ❖ His spouse was first employed by the Board in or around 2011 as a substitute teacher; in or around 2017, Respondent’s spouse became a part-time aide; and in or around 2019, his spouse became a full-time aide. Respondent argues that the Board’s nepotism policy excludes substitutes from its purview, and notes that a

Board member's relative may be employed by the Board if such employment is approved by the ECS; in this case, approval was obtained from the ECS in 2017.

- ❖ On September 21, 2021, Complainant used an alias to submit eight (8) OPRA requests to the District.
- ❖ At a Board meeting on October 11, 2021, during the "Board Comments" portion of the meeting, he mentioned that he was the "subject of several OPRA requests"; however, he did not name the individual who filed the requests (Complainant).
- ❖ During the "Board Comments" portion of the Board meeting on November 15, 2021, Respondent raised questions about why he had been "singled out for OPRA requests implying that he engaged in nepotism," and opined that the motivation (for the OPRA requests) may have been racial bias.
- ❖ On November 21, 2021, "an article appeared in the Mount Olive Chronicle, discussing Complainant's OPRA requests and other Board matters." Complainant was interviewed for the article and acknowledged that he was the individual who submitted the OPRA requests.
- ❖ On November 22, 2021, and in response to Complainant's email alleging that the OPRA requests were confidential, Complainant was advised (by Board counsel) that OPRA requests were not confidential and Board members do not "breach any confidentiality by sharing an OPRA request with media."
- ❖ As revealed to Complainant as part of additional OPRA requests (for which he used his real name), six of the nine members of the Board have relatives employed by the Board, but Respondent was the only Board member against whom he filed a Complaint alleging violations of nepotism.

With the above in mind, and regarding the alleged violations of *N.J.S.A.* 18A:12-24(b), *N.J.S.A.* 18A:12-24(c), and *N.J.S.A.* 18A:12-24(f), Respondent argues Complainant "fails to specify how Respondent used his official position to secure unwarranted privileges for himself or others, allegedly acted in his official capacity where he or a family member had a financial or personal involvement creating some benefit to himself or the family member, or allegedly used his public office or confidential information to secure financial gain for himself or a family member."

Respondent further maintains, "[t]o the extent" Complainant asserts Respondent "leaked" information to the media regarding Complainant's OPRA requests, such allegations fail "as a matter of law, as OPRA requests are not confidential," and "alleged OPRA violations are outside the jurisdiction of the ... Commission." In addition, "[t]o the extent" the Complaint is read to suggest Respondent called Complainant a racist, "the video of the meeting belies such allegation." Further, "[t]o the extent" the Complaint is read to suggest that "Respondent improperly voted to approve the District's payroll since 2017 despite his [spouse's] employment by the Board, such allegation fails because the facts demonstrate that Respondent and every other Board member ... have consistently voted 'Yes' to approve the payroll ... with absolutely no reference to individual employee names or positions." Finally, "[t]o the extent" the Complaint

is read to suggest that Respondent's spouse was reappointed while other aides with more experience were passed over, "the Complaint is devoid of any factual support ... to authenticate the basis for such [an] allegation."

Respondent further argues Complainant's allegations are time-barred because Complainant notes Respondent's actions began in 2017, and the Complaint was not filed within 180 days thereof. In addition, the ECS approved the hiring of Respondent's spouse in 2019; annual re-approvals are not required, and any challenge(s) to the 2019 approval from the ECS is equally time barred. Respondent also argues that any allegations for "failure to comply with laws and regulations governing hiring of school staff fall outside the jurisdiction of the" Commission. For these reasons, Respondent submits Complainant has not provided any evidence to demonstrate that Respondent violated *N.J.S.A. 18A:12-24(b)*, *N.J.S.A. 18A:12-24(c)* and/or *N.J.S.A. 18A:12-24(f)*.

As for the purported Code violations, "the Complaint is utterly devoid of any reference to any personal promise made by Respondent, or any private action taken by Respondent" (*N.J.S.A. 18A:12-24.1(e)*); the Complaint "fails to identify any special interest or political group, and is utterly devoid of reference to any action taken by Respondent on behalf of, or at the request of," any such group, and does not identify how Respondent allegedly "used the schools' for the benefit of himself or a family member" (*N.J.S.A. 18A:12-24.1(f)*); the Complaint fails to identify any confidential information that Respondent disclosed, as OPRA requests are not confidential (*N.J.S.A. 18A:12-24.1(g)*); and the Complaint fails to identify any personnel matter upon which Respondent allegedly acted without the recommendation of the Superintendent (*N.J.S.A. 18A:12-24.1(h)*). Therefore, Respondent maintains the alleged violations of *N.J.S.A. 18A:12-24.1(e)*, *N.J.S.A. 18A:12-24.1(f)*, *N.J.S.A. 18A:12-24.1(g)*, and *N.J.S.A. 18A:12-24.1(h)* should also be dismissed.

Finally, Respondent asserts the Complaint is frivolous because Complainant's "bad faith and malicious intent are overt and palpable." According to Respondent, Complainant's "barrage of OPRA requests" and nepotism allegations only against Respondent, when there are other Board members who have family employed by the Board, "further evidences that Complainant is not motivated by truly-held ethical concerns, but rather by a desire to target and blemish the reputation of Respondent specifically." Respondent further asserts Complainant was informed "several times" by Board counsel that OPRA requests are not confidential and, therefore, Complainant "knew, or should have known, that the complaint was without reasonable basis." Respondent notes, it is clear Complainant "is motivated by a personal or political gripe against Respondent and/or his spouse" and, therefore, the Complaint "is abusive of a system which was designed to address conduct in violation of the public trust, *not* personal disagreements." As such, Respondent respectfully requests that the Commission grant the Motion to Dismiss and sanction Complainant.

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

In response to the Motion to Dismiss and allegation of frivolous filing, Complainant reaffirms his allegations that Respondent violated *N.J.S.A. 18A:12-24(b)*, *N.J.S.A. 18A:12-24(c)*, *N.J.S.A. 18A:12-24(f)*, *N.J.S.A. 18A:12-24.1(e)*, *N.J.S.A. 18A:12-24.1(f)*, *N.J.S.A. 18A:12-24.1(g)* and *N.J.S.A. 18A:12-24.1(h)* because Respondent "released information from closed

session [Board] meetings to the editor/reporter in an attempt to intimidate individuals/[C]omplainant during the OPRA request process and helped in evading legal proper procedures.” According to Complainant, Board counsel notified the Board and Respondent about the OPRA requests at the Board meeting on September 23, 2021; the OPRA request was kept confidential from the public; and the OPRA requests were “never mentioned in any open public” Board meetings until Respondent discussed them at the Board meeting on October 11, 2021. Subsequently, Complainant was contacted by the reporter on November 15, 2021, via Facebook. Complainant notes that, during his conversation with the reporter, she (the reporter) revealed that Respondent gave her Complainant’s name “as the individual who submitted the OPRA request which allowed her to circumvent the proper procedures on procuring the OPRA request for herself by submitting an OPRA request”

Complainant reasserts that Respondent violated *N.J.S.A. 18A:12-24(b)*, *N.J.S.A. 18A:12-24(c)*, *N.J.S.A. 18A:12-24(f)*, *N.J.S.A. 18A:12-24.1(e)*, *N.J.S.A. 18A:12-24.1(f)*, *N.J.S.A. 18A:12-24.1(g)* and *N.J.S.A. 18A:12-24.1(h)* because his spouse applied for a job in the District where he is a Board member and was hired despite there being no evidence that Respondent’s wife was “the only qualified and available person for the position” and without receiving approval from the ECS. Additionally, Respondent did not abstain from voting on the payroll matters and, therefore, Respondent approved his “own economic benefit of his wife’s income that they shared as a family.”

As to Respondent’s allegation that the Complaint is time barred, Complainant argues that the facts of this case “only came to light after the OPRA request[s] were submitted,” and that information was obtained “within the 180-day timeframe” of filing his Complaint. Complainant maintains that he did not have knowledge of Respondent’s voting pattern until December 2021, “nor was there any reason why they ‘should have known’ of such matters before then due to the fact that he didn’t know [Respondent’s spouse] worked in the same school district until September of 2021.”

III. Analysis

A. *Jurisdiction of the Commission*

In reviewing the allegations in this matter, the Commission notes that its authority is limited to enforcing the Act, *N.J.S.A. 18A:12-21 et seq.*, a set of minimum ethical standards by which all school officials must abide. In this regard, the Commission has jurisdiction only over matters arising under the Act, and it may not receive, hear, or consider any matter that does not arise under the Act, *N.J.A.C. 6A:28-1.4(a)*.

With the jurisdiction of the Commission in mind, to the extent that Complainant seeks a determination from the Commission that Respondent’s conduct may have violated a Board policy and/or regulation, or may have violated *N.J.A.C. 6A:23A-6.2*, the Commission advises that such determinations fall well beyond the scope, authority, and jurisdiction of the Commission. Nonetheless, Complainant may be able to pursue each of those claims in the appropriate tribunal; however, the Commission is not the appropriate entity to adjudicate such issues. As such, those claims are dismissed.

B. Alleged Untimeliness

In his Motion to Dismiss, Respondent argues that the allegations in Count 2 are time barred because, per Complainant, Respondent's unethical behavior began in 2017, and the Complaint was not filed within 180 days thereof. In addition, the ECS approved the hiring of Respondent's spouse in 2019; annual re-approvals are not required, and any challenge(s) to the 2019 approval from the ECS is equally time barred.

Complainant counters that all of the operative facts "only came to light after the OPRA request[s] were submitted," and that information was obtained "within the 180-day timeframe" of filing his Complaint (on December 12, 2021). Complainant maintains that he did not have knowledge of Respondent's voting pattern until December 2021, "nor was there any reason why they 'should have known' of such matters before then due to the fact that he didn't know [Respondent's spouse] worked in the same school district until September of 2021."

The Commission's regulations provide a one hundred eighty (180) day limitation period for filing a complaint. More specifically, *N.J.A.C. 6A:28-6.5(a)* provides, in relevant part:

- a. Complaints shall be filed within 180 days of notice *of the events which form the basis of the alleged violation(s)*. A complainant shall be deemed to be notified of events which form the basis of the alleged violation(s) *when he or she knew of such events or when such events were made public so that one using reasonable diligence would know or should have known* (emphasis added).

With the above in mind, and pursuant to *N.J.A.C. 6A:28-6.5(a)*, the Commission must determine when Complainant knew of the events which form the basis of his Complaint, or when such events were made public so that one using reasonable diligence would know, or should have known, of such events.

In reviewing the facts in the light most favorable to Complainant, the Commission finds no reason not to accept Complainant's representation that, until he received information and records responsive to his OPRA request(s) (December 2021), he did not know, or have reason to know, of all the facts set forth in his Complaint. In addition, although certain discrete personnel actions occurred in 2017 and 2019, Respondent's vote on the payroll did occur on a continuous (annual) and reoccurring basis.

With the above in mind, the Commission finds that the allegations in Count 2, because of the date that Complainant learned of all operative facts, as well as the continuing nature of the stated violations, was **timely filed**.

C. 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(s) 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 pled sufficient facts which, if true, could support a finding that Respondent violated *N.J.S.A. 18A:12-24(b)*, *N.J.S.A. 18A:12-24(c)*, and *N.J.S.A. 18A:12-24(f)*, as well as *N.J.S.A. 18A:12-24.1(e)*, *N.J.S.A. 18A:12-24.1(f)*, *N.J.S.A. 18A:12-24.1(g)*, or *N.J.S.A. 18A:12-24.1(h)* in Count 1 and Count 2.

D. *Alleged Violations of the Act*

Complainant submits that, based on the conduct more fully detailed above, Respondent violated *N.J.S.A. 18A:12-24(b)*, *N.J.S.A. 18A:12-24(c)*, and *N.J.S.A. 18A:12-24(f)* in Counts 1-2, and these provisions state:

- 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;
- 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 order to credit the possible violations of *N.J.S.A. 18A:12-24(b)* in Counts 1–2, 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.”

In addition, to credit the potential violations of *N.J.S.A. 18A:12-24(c)* in Counts 1–2, 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.”

Moreover, in order to credit the stated violations of *N.J.S.A. 18A:12-24(f)* in Counts 1–2, 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.

Complainant further submits that Respondent violated *N.J.S.A. 18A:12-24.1(e)*, *N.J.S.A. 18A:12-24.1(f)*, *N.J.S.A. 18A:12-24.1(g)*, and *N.J.S.A. 18A:12-24.1(h)* in Counts 1–2, and these provisions of the Code provide:

- 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.

Pursuant to *N.J.A.C. 6A:28-6.4(a)*, for violations of *N.J.S.A. 18A:12-24.1(e)*, *N.J.S.A. 18A:12-24.1(f)*, *N.J.S.A. 18A:12-24.1(g)*, and/or *N.J.S.A. 18A:12-24.1(h)* in Count 1 and/or Count 2 to be sustained, the Complaint must provide certain factual evidence, to wit:

- 5. Factual evidence of a violation of *N.J.S.A. 18A:12-24.1(e)* shall include 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.
- 6. Factual evidence of a violation of *N.J.S.A. 18A:12-24.1(f)* shall include 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.
- 7. Factual evidence of a violation of the confidentiality provision of *N.J.S.A. 18A:12-24.1(g)* shall include 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. Factual evidence that Respondent violated the inaccurate information provision of *N.J.S.A. 18A:12-24.1(g)* shall include evidence that substantiates the inaccuracy of the information provided by Respondent and evidence that establishes that the inaccuracy was other than reasonable mistake or personal opinion or was not attributable to developing circumstances.

8. Factual evidence of a violation of *N.J.S.A.* 18A:12-24.1(h) shall include evidence that Respondent acted on a personnel matter without a recommendation of the chief administrative officer.

Count 1

Following a thorough review of the Complaint, and based on the actions more fully detailed above, the Commission finds that, even if the facts as contended are proven true by sufficient credible evidence, they would not support a finding that Respondent violated *N.J.S.A.* 18A:12-24(b), *N.J.S.A.* 18A:12-24(c), and *N.J.S.A.* 18A:12-24(f), as well as *N.J.S.A.* 18A:12-24.1(e), *N.J.S.A.* 18A:12-24.1(f), *N.J.S.A.* 18A:12-24.1(g), and/or *N.J.S.A.* 18A:12-24.1(h). Even if Respondent provided information to a reporter about Complainant's OPRA request, the Complaint does not offer a credible or reasonable basis upon which to find that filing of a request for public records with a public body, or any information related to that request (including Complainant's identity), is confidential or otherwise privileged information which is exempt from disclosure. While it may not be sagacious to share or discuss this kind of information with an individual who is not a member of the Board, there is nothing, based on the facts as asserted in the Complaint, which could establish that such disclosure is unethical and/or constitutes: use by Respondent of his official position to secure an unwarranted privilege, advantage, or employment for himself or his spouse (or an "other") (*N.J.S.A.* 18A:12-24(b)); action in Respondent's official capacity in a matter in which he or a member of his immediate family had a direct or indirect financial involvement, or action in a matter in which he had a personal involvement that created some benefit to him, a member of his immediate family, or others (*N.J.S.A.* 18A:12-24(c)); use by Respondent of information not generally available to the public for the purpose of securing financial gain for himself or his spouse, as no financial gain (actual or possible) for Respondent or his spouse was detailed in the Complaint (*N.J.S.A.* 18A:12-24(f)); a personal promise or private "action" beyond the scope of his duties as a Board member that had the potential to compromise the Board (*N.J.S.A.* 18A:12-24.1(e)); action on behalf of a special interest group or persons organized and voluntarily united in opinion, or use of the schools to acquire a benefit for himself or his spouse, as no such benefit (actual or theoretical) was pled (*N.J.S.A.* 18A:12-24.1(f)); action to make public, reveal, or otherwise disclose non-public or confidential information, or the provision of inaccurate information (*N.J.S.A.* 18A:12-24.1(g)); and/or action on a personnel matter without a recommendation of the chief administrative officer (*N.J.S.A.* 18A:12-24.1(h)).

Accordingly, the Commission finds that the alleged violations of *N.J.S.A.* 18A:12-24(b), *N.J.S.A.* 18A:12-24(c), and *N.J.S.A.* 18A:12-24(f), as well as *N.J.S.A.* 18A:12-24.1(e), *N.J.S.A.* 18A:12-24.1(f), *N.J.S.A.* 18A:12-24.1(g), and *N.J.S.A.* 18A:12-24.1(h) in Count 1 should be dismissed.

Count 2

After a comprehensive 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(b)*, *N.J.S.A. 18A:12-24(c)*, and *N.J.S.A. 18A:12-24(f)*, as well as *N.J.S.A. 18A:12-24.1(e)*, *N.J.S.A. 18A:12-24.1(f)*, *N.J.S.A. 18A:12-24.1(g)*, and/or *N.J.S.A. 18A:12-24.1(h)*. Although the Commission agrees that Respondent *would* have violated the Act if he had voted on a matter which solely involved his spouse and/or voted on a matter which resulted in his spouse receiving a unique, “unwarranted,” or exclusive benefit; however, voting to approve the payroll for the entirety of the District’s personnel, of which Respondent’s spouse is one among several hundred employees (and possibly more), is no different than a Board member voting to approve the terms of the contract (between the Board and the local education association) after negotiations have been concluded. In this way, voting to approve the budget is akin to voting to approve contractually established salaries. Consequently, there is no factual evidence which could possibly prove that Respondent’s vote on the payroll constitutes: use by Respondent of his official position to secure an unwarranted privilege, advantage, or employment for himself or his spouse (or an “other”) (*N.J.S.A. 18A:12-24(b)*); action in Respondent’s official capacity in a matter in which he or a member of his immediate family had a direct or indirect financial involvement, or action in a matter in which he had a personal involvement that created some benefit to him, a member of his immediate family, or others (*N.J.S.A. 18A:12-24(c)*); use by Respondent of information not generally available to the public for the purpose of securing financial gain for himself or his spouse (*N.J.S.A. 18A:12-24(f)*); a personal promise or private “action” beyond the scope of his duties as a Board member that had the potential to compromise the Board (*N.J.S.A. 18A:12-24.1(e)*); action on behalf of a special interest group or persons organized and voluntarily united in opinion, or use of the schools to acquire a benefit for himself or his spouse (*N.J.S.A. 18A:12-24.1(f)*); action to make public, reveal, or otherwise disclose non-public or confidential information, or the provision of inaccurate information (*N.J.S.A. 18A:12-24.1(g)*); and/or action on a personnel matter without a recommendation of the chief administrative officer (*N.J.S.A. 18A:12-24.1(h)*).

Therefore, the Commission finds that the alleged violations of *N.J.S.A. 18A:12-24(b)*, *N.J.S.A. 18A:12-24(c)*, and *N.J.S.A. 18A:12-24(f)*, as well as *N.J.S.A. 18A:12-24.1(e)*, *N.J.S.A. 18A:12-24.1(f)*, *N.J.S.A. 18A:12-24.1(g)*, and *N.J.S.A. 18A:12-24.1(h)* in Count 2 should also be dismissed.

IV. Request for Sanctions

At its meeting on April 26, 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 meeting on May 24, 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 find that the Complaint (and Count 2 specifically) was timely filed, but 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(b), *N.J.S.A.* 18A:12-24(c), and *N.J.S.A.* 18A:12-24(f), as well as *N.J.S.A.* 18A:12-24.1(e), *N.J.S.A.* 18A:12-24.1(f), *N.J.S.A.* 18A:12-24.1(g), and/or *N.J.S.A.* 18A:12-24.1(h) in Count 1 and/or Count 2. 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: May 24, 2022

**Resolution Adopting Decision
in Connection with C91-21**

Whereas, at its meeting on April 26, 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 its meeting on April 26, 2022, the Commission discussed finding that the Complaint (and Count 2 in particular) was timely filed; and

Whereas, at its meeting on April 26, 2022, 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(b), *N.J.S.A.* 18A:12-24(c), and *N.J.S.A.* 18A:12-24(f), as well as *N.J.S.A.* 18A:12-24.1(e), *N.J.S.A.* 18A:12-24.1(f), *N.J.S.A.* 18A:12-24.1(g), and/or *N.J.S.A.* 18A:12-24.1(h) in Count 1 and/or Count 2; and

Whereas, at its meeting on April 26, 2022, the Commission discussed finding the Complaint not frivolous, and denying the request for sanctions; and

Whereas, at its meeting on May 24, 2022, the Commission reviewed and voted to approve the within decision as accurately memorializing its actions/findings from its meeting on April 26, 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 its public meeting on May 24, 2022.

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