

***Before the School Ethics Commission
Docket No.: C01-21
Decision on Motion to Dismiss***

**Brenda Daughtry,
Complainant**

v.

**Guadalupe Cabido, Siaka Sherif, Shawneque Johnson, and Jeffrey Wingfield,
Orange Board of Education, Essex County,
Respondent**

I. Procedural History

This matter arises from a Complaint that was filed on January 25, 2021, by Brenda Daughtry (Complainant), a member and Vice President of the Orange Board of Education (Board), alleging that Guadalupe Cabido (Respondent Cabido), Siaka Sherif (Respondent Sherif), Shawneque Johnson (Respondent Johnson), and Jeffrey Wingfield (Respondent Wingfield) (collectively referred to as Respondents), also members of the Board, violated the School Ethics Act (Act), *N.J.S.A.* 18A:12-21 *et seq.* More specifically, the Complaint avers that Respondents violated *N.J.S.A.* 18A:12-24.1(a) of the Code of Ethics for School Board Members (Code) in Count 1; violated *N.J.S.A.* 18A:12-24.1(b) of the Code in Count 2; violated *N.J.S.A.* 18A:12-24.1(c) of the Code in Count 3; violated *N.J.S.A.* 18A:12-24.1(e) of the Code in Count 4; and violated *N.J.S.A.* 18A:12-24.1(g) of the Code in Count 5.

On January 27, 2021, the Complaint was served on Respondents, via electronic mail, notifying them that charges were filed against them with the School Ethics Commission (Commission), and advising that they had twenty (20) days to file a responsive pleading.¹ On March 2, 2021, Respondents filed a Motion to Dismiss in Lieu of Answer (Motion to Dismiss), and on April 17, 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 plead sufficient, credible facts to support a finding that Respondents violated *N.J.S.A.* 18A:12-24.1(a) in Count 1; violated *N.J.S.A.* 18A:12-24.1(b) in Count 2; violated *N.J.S.A.* 18A:12-

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

24.1(c) in Count 3; violated *N.J.S.A.* 18A:12-24.1(e) in Count 4; and/or violated *N.J.S.A.* 18A:12-24.1(g) in Count 5.

II. Summary of the Pleadings

A. *The Complaint*

In her five (5) Count Complaint, Complainant states that the following facts are relevant to each Count: a “Special Executive Board Meeting” was scheduled for July 29, 2020, “with the purpose of completing the Superintendent’s Evaluation”; during this meeting, the named Respondents “made a decision to block the telephone conference attendance of Complainant (the Board Vice President); other than Complainant, all other members of the Board physically attended the meeting (in-person); after roll call was taken, “the four Respondents immediately and incorrectly concluded that although Complainant ... did submit her individual evaluation ... since Complainant ... was not able to attend a few subsequent ... discussions, [she] should not be allowed to attend this last meeting and discussion to finalize the Superintendent[’s] Annual Summary Report”; despite objections from Complainant and the Board President, the named Respondents “voted to exclude Complainant ... from the meeting”; both Complainant and the Board President refused to cast votes in the decisions; and, ultimately, the phone conferencing connection for Complainant was terminated.

According to Complainant, the reasoning “put forth by these four Respondents concluding that it is proper to exclude a Board Member ... is totally baseless and improper,” and “no School Board has the right to exclude any Board Member from any meeting.” In support of her position, Complainant cited the Board’s Policy (0164), Robert’s Rules of Order, and the Open Public Meetings Act (OPMA). Complainant additionally noted that virtual meetings “have occurred regularly during the COVID-19 pandemic and, given the Executive Order issued by Governor Murphy, it was “strongly advised, and at times mandated,” that teleconferencing be used to conduct meetings. In short, there was no reason to conclude that teleconferencing should not be permitted for the special meeting on July 29, 2020.

With the above in mind, and in Count 1, Complainant asserts Respondents violated *N.J.S.A.* 18A:12-24.1(a) because, through an improper vote, they acted in “direct contradiction” to OPMA and Executive Order 107 (regarding the declaration of a State Emergency due to the COVID-19 pandemic). Complainant further asserts that neither Respondents’ “purposeful and bad decisions” “nor means of remote meeting participation[,] are reasons to exclude other members from official meetings, especially during the extraordinary state of affairs due to this COVID-19 pandemic.”

In Count 2, Complainant contends Respondents violated *N.J.S.A.* 18A:12-24.1(b) because “the aforementioned factual evidence” shows that Respondents “‘willfully made a decision’ to deny the Civil Rights of a public official,” and, thereby, placed the District “at legal risk, thus interfering with the ‘educational welfare of children.’”

In Count 3, Complainant asserts Respondents violated *N.J.S.A.* 18A:12-24.1(c) because “the aforementioned factual evidence shows that Respondents ... took actions that did not

‘confine [Complainant’s] board action to policy making, planning, and appraisal.’” According to Complainant, by not allowing her (Complainant) to attend the meeting, Respondents “showed total disregard for the Civil Rights of a [p]ublic [o]fficial as outlined in Title 10 of NJ Statutes.” Complainant notes that Respondents did not reference “any [D]istrict bylaws nor statutes” to support their decision to exclude Complainant from the meeting in question. According to Complainant, despite her objection and that of the Board President to Respondents’ actions, they (Respondents) “still made motions to initiate and carry out the vote.”

In Count 4, Complainant contends Respondents violated *N.J.S.A.* 18A:12-24.1(e) because it is “well beyond the scope of a Board [m]ember’s duties to deny the rights and attendance of any Board Member” and “[p]urposefully acting contrary to [S]tate rules and regulations had the potential to compromise the [B]oard.”

In Count 5, Complainant alleges Respondents violated *N.J.S.A.* 18A:12-24.1(g) because “the aforementioned factual evidence” shows that they did not “provide accurate information” to Complainant and the Board President when questioned by them (Complainant and the Board President). Instead, Respondents claimed that it was “their right by [S]tate law to conduct a vote to exclude a Board member,” and that the “meeting and vote had to be conducted by the will of the majority, which still does not outweigh law.” Complainant notes, Respondents’ actions were “purposeful and extremely unreasonable.”

B. *Motion to Dismiss*

Following receipt of the Complaint, Respondents filed a Motion to Dismiss and argue, “[o]ut of concern for confidentiality,” the Board “decided to hold in-person meetings when discussing the Superintendent’s evaluation, beginning with the first meeting on June 23, 2020.” According to Respondents, “[a]dditional restrictions imposed by the Board upon Board members ... were that none of the Superintendent’s personnel records were to be shared virtually and no hard copies were to leave the Board ... building.” On June 17, 2020, the Board President sent an email to every Board member “confirming that all meetings regarding the Superintendent’s evaluations would take place in person.” Respondents note that the Board’s minutes verify that Complainant did not attend the meetings that took place on June 23, June 26, July 23, and/or July 28, 2020, to discuss the Superintendent’s evaluation. In addition, the public notice for the July 29, 2020, Board meeting indicated that it would be conducted at the administration building; despite this fact, Complainant did not physically attend, but instead sought to participate by telephone. As a result, and at the July 29, 2020, meeting, “Board members took a vote on whether ... [Complainant] should be permitted to participate by phone, despite the Board’s agreed-to directive based upon confidentiality concerns to require that all members participate ... in person.” According to Respondents, “[i]t was decided by a majority of the Board that [Complainant] be removed from the online/virtual participation, due to no guarantee of confidentiality at her location.”

With the above in mind, and regarding the allegations in Count 1, Respondents argue that, despite being required by the corresponding regulation, Complainant did not provide “a final order holding that the Board violated the [OPMA]” or otherwise acted in an illegal or

unethical manner. In addition, Complainant failed to “identify any section” of the OPMA that the Board members violated by complying with the agreed-upon Board procedure requiring in-person attendance to discuss the Superintendent’s evaluation; any alleged violation of Executive Order 107 is “misplaced” because it (Executive Order 107) was revised in subsequent Executive Orders and, around the time of the meeting, the most recently issued Executive Order permitted indoor gatherings; and the July 29, 2020, Board meeting “complied with Executive Order 161 and 152.” Respondents submit that, “[w]ithout evidence to support alleged violations of *N.J.S.A.* 18A:12-24.1(a),” Count 1 should be dismissed.

As for the allegations in Count 2, Respondents maintain that Complainant “failed to set forth any evidence that Respondents acted to interfere with any programs or policies,” and failed “to set forth evidence to demonstrate that Respondents’ compliance with an “in-person directive was contrary to the educational welfare of children.” Respondents further maintain that Complainant did not provide any evidence to demonstrate “that Respondents purposefully interfered with or obstructed programs or policies for the benefit of all children.” According to Respondents, the Complaint also “fails to set forth any evidence of a violation of either Complainant’s civil rights, or a legal risk to the Board except for unfounded legal filings, or any interference with the ‘educational welfare of children.’” Without this evidence, Respondents submit that the alleged violation of *N.J.S.A.* 18A:12-24.1(b) in Count 2 should be dismissed.

Regarding the allegations in Count 3, Respondents argue that, contrary to Complainant’s assertions, they “acted within their obligation to take board action with respect to ‘policy making, planning and appraisal’ by requiring in person attendance at these meetings.” Respondents maintain that an email was distributed to all Board members on June 17, 2020, about the in-person attendance, and Complainant did not object. Despite this, Respondents assert that Complainant attempted to “circumvent” the Board’s decision and participate in the July 29, 2020, meeting by telephone. The Board members who attended the July 29, 2020, meeting in person, voted on whether to permit Complainant to participate by telephone. Respondents argue had they permitted Complainant to attend the July 29, 2020, meeting via telephone, it would have “contradict[ed]” the Board’s requirement for in-person attendance, and also would have contradicted “the Public Notice announcing the Board meeting.” According to Respondents, on July 29, 2020, the Board voted, “in compliance with all rules and procedures,” to exclude Complainant’s “request for special treatment to circumvent the Board’s confirmed procedure for these meetings.” Respondents contend that Complainant did not provide any evidence to show that Respondents “exceeded the scope of their authority to effectuate policies and plans” nor that Respondents violated *N.J.S.A.* 18A:12-24.1(c); therefore, Count 3 should be dismissed.

As for the allegations in Count 4, Respondents argue that Complainant’s disagreement with the decision rendered by Respondents not to allow her (Complainant) to participate in the meeting via telephone does not translate to a violation of *N.J.S.A.* 18A:12-24.1(e). Instead, Respondents maintain they “acted to uphold the decision of the Board to conduct the July 29, 2020 meeting in-person.” Acquiescing to Complainant’s request would have “ignored the previous decision of the Board . . . , digressed from the Board’s normal practice when addressing [personnel] records of a specific individual, and would have contradicted the Public Notice for

the Board meeting.” In addition, allowing Complainant to participate as requested would have “risked compromising the Board.” For these reasons, Count 4 also should be dismissed.

Regarding the allegations in Count 5, Respondents state, “[d]eciding to require in-person attendance at meetings concerning the Superintendent’s performance and voting to prevent Complainant from participating ... by telephone, do not violate *N.J.S.A.* 18A:12-24.1(g)” In addition, Respondents argue that, “[a]s a Board member,” Complainant “was required to be aware of the Board policy requiring in person meetings when personal documents of a specific individual are involved, such as for an evaluation.” Respondents further assert that the Board President reminded each member (in writing) that meetings regarding the Superintendent’s evaluation “would require in-person attendance.” Respondents argue that Complainant was provided with “accurate information” at all times, and that they (Respondents) went to great lengths to safeguard the confidential nature of the information to be discussed. Because Complainant did not provide any evidence to support a violation of *N.J.S.A.* 18A:12-24.1(g), Count 5 should be dismissed.

Based on the above, Respondents “respectfully request” that the Complaint be dismissed with prejudice.

C. Response to Motion to Dismiss

In her response to the Motion to Dismiss, Complainant notes that, other than the Act, *N.J.S.A.* 10:4-11 is the “only statute” that Complainant believes Respondents “did not adhere to.” Complainant further offers the following facts:

- Respondents never expressed any concerns regarding confidentiality at the meeting on July 29, 2020. Respondents only concern was “although [Complainant] did submit her individual Superintendent Evaluation via the [New Jersey School Boards Association (NJSBA)] Online Evaluation Tool, because [Complainant] missed prior discussions, she should not be allowed to attend this final discussion.”
- Contrary to Respondents’ claims that “... none of the Superintendent’s personnel records were to be shared virtually ...,” Complainant argues that the Board President certified that the only documents that could not leave the premises were the drafts and final copies of the “Final Annual Evaluation Summary Report.”
- Despite Respondent Johnson’s certification, Complainant notes Respondent Johnson was only a Board member for six months and never participated in any evaluations; and there is no policy that states the Superintendent’s evaluation must be conducted “exclusively in-person, nor exclusively in [c]losed session.”
- Despite Respondent Johnson’s certification, Complainant argues, “Any district meeting held in any building can be attended by any Board member remotely.”
- Respondent Johnson’s certification indicating that the Board voted to exclude Complainant from the meeting due to confidentiality concerns is untrue. Per Complainant, the Board President certified the sole reason that Respondents provided for

not allowing Complainant to participate in the final Evaluation meeting was because Complainant did not attend any previous meetings.

- Complainant denies that she requested permission to attend the meeting by phone because, “It was her right to attend” and the Board President never questioned Complainant’s intention to attend the meeting virtually.
- Regarding the Governor’s Executive Orders, Complainant argues she was entitled to attend the meeting virtually during the pandemic.
- A precedent was set because two other Board members (Respondent Wingfield and Respondent Sheriff) were permitted to participate in the 2019 Superintendent’s Search meeting remotely after missing five previous meetings and former Board member Christina Mateo was permitted to attend remotely after missing three previous meetings.

Based on the facts above, and as to the *N.J.S.A.* 18A:12-24.1(a) allegation, Complainant notes, “After reviewing the proven history, precedent of Superintendent Evaluation Meeting protocol, and deliberate circumvention of District policy,” “it should not be difficult to find a violation of this statute.”

Regarding the *N.J.S.A.* 18A:12-24.1(b) allegation, Complainant reaffirms her assertions and notes that by not allowing an experienced Board member to participate in the evaluation of the Superintendent, it “directly affected the outcome of the Evaluation.”

As to the *N.J.S.A.* 18A:12-24.1(c) allegation, Complainant argues that the Board President did not state in his June 17, 2020, email that all Board members needed to attend the meeting regarding the Superintendent’s evaluation in-person, “to the exclusion of any Board [m]ember wishing to attend remotely.” The “in-person statement” was intended to serve as a “confirmation that the” meeting would be held at the Administrative building, instead of virtually as it had been for the last three months, and as a reminder to all Board members who wanted to view the Superintendent’s evaluation documents that they would need to do that on the premises because the documents would not be shared electronically. Complainant asserts that she was not “attempt[ing] to circumvent” any previous Board decisions, since none existed. Complainant reaffirms that she had the right to attend the meeting remotely. Neither Board Policy 1240, nor Board Policy 0116 “defines Executive session as in-person only, excluding participation by other remote means.”

Regarding the *N.J.S.A.* 18A:12-24.1(e) allegation, Complainant reasserts that Respondents “did not ever raise concerns about confidentiality.” According to Complainant, Respondents’ sole objection to Complainant’s participation in the July 29, 2020, meeting was because “she missed previous meetings.” Complainant reaffirms that the purpose of the Board President’s June 17, 2020, email “was not a mandate to exclude Board members who chose to participate in the discussion by other means,” but rather to inform the Board members that the documents regarding the Superintendent’s Annual Summary Report would not be shared electronically and had to be viewed in person. Complainant argues that Respondent Johnson inaccurately certified that Board policy dictates that the “review of personnel records by the

Board is always and only done in-person.” Complainant provides that Board Policy 1240 (Exhibit N) refers to the educator evaluation process, not the Superintendent, and she adds that Board members “completed their individual NJSBA Evaluations off-site and online” which contradicts Respondents’ argument that “all information collected compiled, and/or maintained’ connected with the Superintendent Evaluation are always only viewed ‘in-person.’” Complainant reaffirms that Respondents “exceeded the scope of their duties by excluding a Board member because of their disagreement with the presiding Board President and Vice President,” regarding remote participation, despite the fact one of the Respondents participated in the Superintendent Search Personnel meeting remotely.

Finally, as to the *N.J.S.A.* 18A:12-24.1(g) allegation, Complainant again reasserts that Respondents inaccurately claim “that there was a Board decision to require in-person only attendance” at the July 29, 2020, meeting. Complainant reaffirms that Respondent Johnson provided inaccurate information and Respondent Wingfield provided a “glaring self-contradiction” (he missed five meetings in 2019 prior to the Superintendent search) to support their reasons for why Complainant should not be allowed to participate in the meeting.

Based on the information provided, Complainant requests that the Commission deny Respondents’ Motion to Dismiss.

D. *Public Comments Offered at the Commission’s Meeting on April 27, 2021*

At the Commission’s meeting on April 27, 2021, Tyrone Tarver appeared by telephone and offered public comments in support of Complainant’s filing. More detailed information regarding the substance of Mr. Tarver’s public comments can be found in the public minutes from the Commission’s meeting on April 27, 2021.²

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 asserted sufficient facts which, if true, could support a finding that Respondents violated *N.J.S.A.* 18A:12-24.1(a) in Count 1; violated *N.J.S.A.* 18A:12-24.1(b) in Count 2; violated *N.J.S.A.* 18A:12-24.1(c) in Count 3; violated *N.J.S.A.* 18A:12-24.1(e) in Count 4; and/or violated *N.J.S.A.* 18A:12-24.1(g) in Count 5. The Commission notes that, despite the offering of public comments at its meeting on April 27, 2021, the Commission’s review of this matter was limited to the parties’ written submissions.

² See [School Ethics Commission Meeting Dates](https://www.nj.gov/education/ethics/meetings.shtml): <https://www.nj.gov/education/ethics/meetings.shtml>.

B. 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 Respondents (either individually or collectively) violated Complainant's civil rights (pursuant to State or federal law), the OPMA, an Executive Order(s) issued by Governor Murphy, Robert's Rules of Order, and/or a Board policy or regulation, the Commission advises that such determinations fall outside 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.

C. Alleged Code Violations

In the Complaint, Complainant contends that Respondents violated *N.J.S.A.* 18A:12-24.1(a) in Count 1; violated *N.J.S.A.* 18A:12-24.1(b) in Count 2; violated *N.J.S.A.* 18A:12-24.1(c) in Count 3; violated *N.J.S.A.* 18A:12-24.1(e) in Count 4; and violated *N.J.S.A.* 18A:12-24.1(g) in Count 5. 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.
- 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.
- 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.

Count 1

Complainant argues that Respondents violated *N.J.S.A.* 18A:12-24.1(a) because, through an improper vote to determine whether she (Complainant) should be able to participate in the special meeting on July 29, 2020, Respondents acted in "direct contradiction" to OPMA and

Executive Order 107 (regarding the declaration of a State Emergency due to the COVID-19 pandemic).

Respondents counter that, despite being required by the corresponding regulation (*N.J.A.C.* 6A:28-6.4), Complainant did not provide “a final order holding that the Board violated the [OPMA]” or otherwise acted in an illegal or unethical manner.

As set forth in *N.J.A.C.* 6A:28-6.4(a)(1), factual evidence of a violation of *N.J.S.A.* 18A:12-24.1(a) shall include a copy of a final decision from any court of law or administrative agency of this State demonstrating that Respondents failed to enforce all laws, rules and regulations of the State Board of Education, and/or court orders pertaining to schools or that Respondents brought about changes through illegal or unethical procedures.

After review of the Complaint, the Commission finds that even if the facts as argued are proven true by sufficient credible evidence, they would not support a finding that Respondents violated *N.J.S.A.* 18A:12-24.1(a). More specifically, the Commission finds that, despite being required by *N.J.A.C.* 6A:28-6.4(a)(1), Complainant has not provided **a copy of a final decision(s)** from any court of law or other administrative agency demonstrating that Respondents (either individually or collectively) violated a specific law, rule, or regulation when they engaged in the actions/conduct set forth in the Complaint. Absent such a final decision, and even if the accusations may be actionable in another tribunal, the Commission finds that there is insufficient credible evidence to support a finding that Respondents violated *N.J.S.A.* 18A:12-24.1(a).

Count 2

Complainant claims that Respondents violated *N.J.S.A.* 18A:12-24.1(b), because when Respondents voted to exclude her from the special meeting on July 29, 2020, they “‘willfully made a decision’ to deny the Civil Rights of a public official,” and, thereby, placed the District “at legal risk, thus interfering with the ‘educational welfare of children.’”

Respondents counter that Complainant “failed to set forth any evidence that Respondents acted to interfere with any programs or policies”; failed “to set forth evidence to demonstrate that Respondents’ compliance with an “in-person directive was contrary to the educational welfare of children”; did not provide any evidence to demonstrate “that Respondents purposefully interfered with or obstructed programs or policies for the benefit of all children”; and the Complaint “fails to set forth any evidence of a violation of either Complainant’s civil rights, or a legal risk to the Board except for unfounded legal filings, or any interference with the ‘educational welfare of children.’”

Pursuant to *N.J.A.C.* 6A:28-6.4(a)(2), factual evidence of a violation of *N.J.S.A.* **18A:12-24.1(b)** shall include evidence that Respondents willfully made a decision contrary to the educational welfare of children, or evidence that Respondents 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.

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 Respondents violated *N.J.S.A.* 18A:12-24.1(b). Although it is evident, that Complainant believes that Respondents lacked the authority to exclude her from the special meeting on July 29, 2020, and that, in doing so, they violated her “rights” and certain laws beyond the purview of the Commission, it is also equally clear that the decision had everything to do with how the Board, *as a body/entity*, believed the Board meeting should be conducted. In essence, Respondents were concerned about the manner and method of Complainant’s participation in the special meeting (based on previous discussions/directives) and, as a result, a decision was made for the body/entity to vote. The decision to call a vote (and their individual votes thereafter) had no relationship to the educational welfare of children and/or the programs and policies designed to meet the individual needs of all District students, but rather related to Board governance. As a result, the Commission finds that the alleged violation of *N.J.S.A.* 18A:12-24.1(b) should be dismissed.

Count 3

Complainant alleges that Respondents violated *N.J.S.A.* 18A:12-24.1(c) because they did not confine their actions to “policy making, planning, and appraisal”; they “showed total disregard for the Civil Rights of a [p]ublic [o]fficial” when they voted to exclude her (Complainant) from the meeting; and they did not reference “any [D]istrict bylaws nor statutes” to support their decision to exclude Complainant from the special meeting.

Respondents counter that, contrary to Complainant’s assertions, they “acted within their obligation to take board action with respect to ‘policy making, planning and appraisal’ by requiring in person attendance at these meetings”; Complainant attempted to “circumvent” the Board’s decision and participate in the July 29, 2020, meeting by telephone; had they permitted Complainant to attend the July 29, 2020, meeting via telephone, it would have “contradict[ed]” the Board’s requirement for in-person attendance, and also contradicted “the Public Notice announcing the Board meeting”; and Complainant did not provide any evidence to show that Respondents “exceeded the scope of their authority to effectuate policies and plans” nor that Respondents violated *N.J.S.A.* 18A:12-24.1(c).

As set forth in *N.J.A.C.* 6A:28-6.4(a)(3), factual evidence of a violation of ***N.J.S.A. 18A:12-24.1(c)*** shall include evidence that Respondents took board action to effectuate policies and plans without consulting those affected by such policies and plans, or took action that was unrelated to Respondents’ 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.

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 Respondents violated *N.J.S.A.* 18A:12-24.1(c). Again, although Complainant did not agree with the determination made by the Board (of which Respondents are members) to exclude her from the

special meeting on July 29, 2020, Respondents presented their concerns to the Board (the body) and a vote was taken. In requiring a vote, the Board (which necessarily includes Respondents) polled those who were affected by the previous decisions/directives to require in-person attendance when discussing the Superintendent's employment. Furthermore, discussing how a Board meeting should be conducted, and ultimately voting on the issue, certainly falls within the duties and responsibilities of a Board member, and the body as a whole. Therefore, the Commission finds that the alleged violation of *N.J.S.A. 18A:12-24.1(c)* should be dismissed.

Count 4

Complainant asserts that Respondents violated *N.J.S.A. 18A:12-24.1(e)* because it is “well beyond the scope of a Board [m]ember’s duties to deny the rights and attendance of any Board Member” and “[p]urposefully acting contrary to [S]tate rules and regulations had the potential to compromise the [B]oard.”

Respondents counter that Complainant’s disagreement with the decision rendered by Respondents not to allow her (Complainant) to participate in the meeting via telephone does not translate to a violation of *N.J.S.A. 18A:12-24.1(e)*. Instead, Respondents maintain they “acted to uphold the decision of the Board to conduct the July 29, 2020 meeting in-person.”

Pursuant to *N.J.A.C. 6A:28-6.4(a)(5)*, factual evidence of a violation of ***N.J.S.A. 18A:12-24.1(e)*** shall include evidence that Respondents made personal promises or took action beyond the scope of their duties such that, by its nature, had the potential to compromise the board.

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 Respondents violated *N.J.S.A. 18A:12-24.1(e)*. Despite Complainant’s suggestion to the contrary, discussion by Board members (Respondents) as to the manner and method in which a Board meeting should be conducted, and ultimately calling for a vote on the matter by the body at large, are indisputably governance issues that fall within the scope of a Board member’s (and the Board’s) duties and responsibilities. Disagreement with the decision of the Board (and those who voted in favor of the action) does not translate, based on the facts and circumstances as presented, to a violation of this subsection of the Code. As a result, the Commission finds that the alleged violation of *N.J.S.A. 18A:12-24.1(e)* should be dismissed.

Count 5

Complainant contends that Respondents violated *N.J.S.A. 18A:12-24.1(g)* because they did not “provide accurate information” to Complainant and the Board President when questioned by them (Complainant and the Board President), and instead claimed that it was “their right by [S]tate law to conduct a vote to exclude a Board member,” and that the “meeting and vote had to be conducted by the will of the majority”

Respondents counter that “[d]eciding to require in-person attendance at meetings concerning the Superintendent’s performance and voting to prevent Complainant from participating ... by telephone, do not violate *N.J.S.A. 18A:12-24.1(g)*” Respondents maintain

that Complainant was provided with “accurate information” at all times, and that they (Respondents) went to great lengths to safeguard the confidential nature of the information (the Superintendent’s employment) to be discussed.

As set forth in *N.J.A.C. 6A:28-6.4(a)(7)*, factual evidence of a violation of the confidentiality provision of *N.J.S.A. 18A:12-24.1(g)* shall include evidence that Respondents 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 Respondents 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 Respondents and evidence that establishes that the inaccuracy was other than reasonable mistake or personal opinion or was not attributable to developing circumstances.

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 Respondents violated *N.J.S.A. 18A:12-24.1(g)*. Complainant has not provided any evidence that Respondents (either individually or collectively) took action to make public, reveal, or disclose any non-public or otherwise confidential information at the special meeting on July 29, 2020. Moreover, although Complainant avers that Respondents provided her (and the Board President) with inaccurate information, Complainant has not specifically identified the information that was inaccurate, and has not provided evidence, which substantiates the inaccuracy of the information and/or provided evidence that the inaccuracy was other than reasonable mistake or personal opinion, or was not attributable to developing circumstances. In short, Complainant has failed to provide the factual evidence required by *N.J.A.C. 6A:28-6.4(a)(7)* to support a violation of *N.J.S.A. 18A:12-24.1(g)*. Therefore, the Commission finds that the alleged violation of *N.J.S.A. 18A:12-24.1(g)* 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 Respondents violated *N.J.S.A. 18A:12-24.1(a)* in Count 1; violated *N.J.S.A. 18A:12-24.1(b)* in Count 2; violated *N.J.S.A. 18A:12-24.1(c)* in Count 3; violated *N.J.S.A. 18A:12-24.1(e)* in Count 4; and/or violated *N.J.S.A. 18A:12-24.1(g)* in Count 5.

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 Respondents violated *N.J.S.A. 18A:12-24.1(a)* in Count 1; violated *N.J.S.A. 18A:12-24.1(b)* in Count 2; violated *N.J.S.A. 18A:12-24.1(c)* in Count 3; violated *N.J.S.A. 18A:12-24.1(e)* in Count 4; and/or violated *N.J.S.A. 18A:12-24.1(g)* in Count 5.

Pursuant to *N.J.S.A.* 18A:12-29(b), the Commission hereby notifies Complainant and Respondents 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 C01-21***

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 Respondents violated *N.J.S.A.* 18A:12-24.1(a) in Count 1; violated *N.J.S.A.* 18A:12-24.1(b) in Count 2; violated *N.J.S.A.* 18A:12-24.1(c) in Count 3; violated *N.J.S.A.* 18A:12-24.1(e) in Count 4; and/or violated *N.J.S.A.* 18A:12-24.1(g) in Count 5; 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