

Before the School Ethics Commission
Docket No.: C22-21
Decision on Motion to Dismiss

Maria Ricupero and Gerlando Termini,
Complainants

v.

Susan DeVito,
Randolph Township Board of Education, Morris County,
Respondent

I. Procedural History

This matter arises from a Complaint that was filed on July 7, 2021, by Maria Ricupero (Complainant Ricupero) and Gerlando Termini (Complainant Termini) (collectively referred to as Complainants), alleging that Susan DeVito (Respondent), a member of the Randolph Township Board of Education (Board), violated the School Ethics Act (Act), *N.J.S.A.* 18A:12-21 *et seq.* More specifically, the Complaint posits that Respondent violated *N.J.S.A.* 18A:12-24.1(b) of the Code of Ethics for School Board Members (Code) in Count 1, *N.J.S.A.* 18A:12-24.1(c) of the Code in Count 2, *N.J.S.A.* 18A:12-24.1(e) of the Code in Counts 1–2, *N.J.S.A.* 18A:12-24.1(f) of the Code in Count 1, *N.J.S.A.* 18A:12-24.1(g) of the Code in Count 3, *N.J.S.A.* 18A:12-24(b) in Counts 1–2, and *N.J.S.A.* 18A:12-24(c) in Counts 1–2.

On July 8, 2021, the Complaint was served on Respondent, via electronic mail, notifying her that charges were filed against her with the School Ethics Commission (Commission), and advising that she had twenty (20) days to file a responsive pleading.¹ On July 26, 2021, Respondent filed a Motion to Dismiss in Lieu of Answer (Motion to Dismiss), and also alleged that the Complaint is frivolous. On August 11, 2021, Complainants filed a response to the Motion to Dismiss and allegation of frivolous filing.²

The parties were notified by correspondence dated August 20, 2021, that this matter would be placed on the Commission's agenda for a special meeting on August 30, 2021, in order to make a determination regarding the Motion to Dismiss and allegation of frivolous filing. At a special meeting on August 30, 2021, the Commission considered the filings in this matter and, at its meeting on September 21, 2021, the Commission voted to grant the Motion to Dismiss in its

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

² On August 16, 2021, Respondent filed a reply to Complainants' response to the Motion to Dismiss and allegation of frivolous filing. As this reply is not permitted by the Commission's regulations, it was not considered by the Commission at its meetings on August 30, 2021, and/or September 21, 2021, in ruling on the Motion to Dismiss and allegation of frivolous filing.

entirety because Complainants failed to plead sufficient, credible facts to support a finding that Respondent violated *N.J.S.A.* 18A:12-24.1(b) in Count 1, *N.J.S.A.* 18A:12-24.1(c) in Count 2, *N.J.S.A.* 18A:12-24.1(e) in Counts 1–2, *N.J.S.A.* 18A:12-24.1(f) in Count 1, *N.J.S.A.* 18A:12-24.1(g) in Count 3, *N.J.S.A.* 18A:12-24(b) in Counts 1–2, and/or *N.J.S.A.* 18A:12-24(c) in Counts 1–2. The Commission also voted to find the Complaint not frivolous, and to deny Respondent’s request for sanctions.

II. Summary of the Pleadings

A. *The Complaint*

The following facts are relevant to the allegations in Counts 1–3:

- On May 13, 2021, Respondent “read a ‘walk on’ motion to change the name of Columbus Day on the official Randolph School District [(District)] calendar to Indigenous Peoples Day, at the suggestion of an *ad hoc* subcommittee of the Board on which she and three other [Board] members sit.” Respondent, along with the other subcommittee members, also serve as the Board’s representatives on the “Diversity, Inclusion, Steering Committee” (DISC), “a joint committee of Randolph Township, which also includes representatives from the Town Council ... and the Morris County Human Resources Commission.”
 - Respondent’s motion was not known “to the other five members of the” Board, nor to the Superintendent or any other member of the administration, before it was introduced.
 - In less than three (3) minutes, the Board “voted to remove Columbus Day from the District calendar and replace it with Indigenous People’s Day.”
 - After “days of outrage” and denouncement by several public officials, including a statement from the Town Council that “DISC had nothing to do with this action,” the public was invited to express their opinions at the Board’s next meeting (on June 10, 2021).
- At the Board’s meeting on June 10, 2021, with the exception of three people (including Respondent’s husband), “[a]ll speakers spoke against the [Board’s] actions” Of importance to Complainants, neither Respondent nor her husband disclosed their marital relationship.
 - Respondent also made a speech at the meeting “in which she clearly outlined her motives for bringing up the change on the calendar,” namely that Christopher Columbus is a “bad historical figure” and “does not represent a person who is inclusive and free of bias.” She also stated that one of her motivations was to please her adopted child who, according to Respondent’s “own words ‘is black’ and was reportedly thrilled that” Columbus Day would no longer be recognized as a holiday. Respondent also stated that her position, i.e., that Columbus Day should not be in the District calendar, was “in direct correlation with” the District’s mission, but also “freely admitted that her

decision ... was also influenced by her opinion of Christopher Columbus as a mother and as a resident.”

- At the end of the meeting, “the Board voted to remove all holiday names on the calendar and replace them with the generic phrase ‘Day-off.’”
 - This decision “sparked even further community outrage,” with the Town Council and the Mayor denouncing the Board’s actions.
- On June 13, 2021, the Italian American One Voice Coalition (IAOVC) announced, at a press conference, that the Board “would have 30 days in which to reinstate all of the holidays, including Columbus Day, to the official ... District calendar, or it would take additional actions against the Board, which would include legal action to protect the civil rights of Italian Americans”
- On June 21, 2021, the Board held a special meeting “solely to consider whether to rescind its earlier actions and restore all federal and state holidays, including Columbus Day” At this meeting, Respondent reiterated her opinions about Christopher Columbus, “made derogatory comments about the members of the community who spoke out against the earlier calendar changes and accused the audience of being racist ...,” and “again made the comment that it [the calendar] was just a piece of paper”

With the above in mind, and in Count 1 (and based on the events that occurred on May 13, 2021; June 10, 2021; and June 21, 2021), Complainants allege that Respondent “surrendered her independent judgement to pursue a policy based on her own family’s decision about what the District’s position should be on Christopher Columbus and the presence of Columbus Day on the ... District’s official calendar”; “failed to make decisions in terms of the educational welfare of children, and did not 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.” More specifically, Complainants allege that Respondent violated *N.J.S.A. 18A:12-24.1(b)* “[b]y rejecting Columbus and making defamatory and disparaging statements about him, [Respondent] engaged in deliberate action to exclude an entire segment of the Randolph student population in the service of her own personal needs and beliefs,” as “the only race and creed that matters to [Respondent] is that of her own [child]”; violated *N.J.S.A. 18A:12-24.1(e)* “[b]y pursuing a personal agenda to exorcise Christopher Columbus from the ... District and impress her and her husband’s opinions of him upon the community without 1) disclosing that it was her husband speaking and 2) using her [child’s] story to manipulate the community” to pursue a “personal issue” important to her (Respondent) and her family; violated *N.J.S.A. 18A:12-24.1(f)* because her “motion would have benefited the narrative that she and her husband seek to teach their child that Columbus ‘*is a murderous colonizer.*’” Complainants further contend that “the issue related to Christopher Columbus and his name on the [D]istrict calendar are clearly related to an issue that [Respondent’s] family had and which [Respondent] acted upon on behalf of her family without concern for the community at large”; violated *N.J.S.A. 18A:12-24(b)* because she “clearly” defended “her family and used her position [as a Board member] to gain unwarranted advantages.” According to Complainants, given the strong opinions expressed by both Respondent and her husband and “the story told about their [child’s] reaction,” they “sought to

remove Columbus Day from the calendar to benefit the narrative they wished to teach their [child] without any respect for the rest of the families of Randolph Township”; and violated *N.J.S.A. 18A:12-24(c)* because Respondent “used her position to raise the original motion and make a statement about Christopher Columbus, with no opportunity for the public to correct her disparaging remarks about Christopher Columbus or provide background on the history of the holiday prior to the vote”

In Count 2, Complainants note the following as additional/relevant facts: at the Board’s meeting on June 10, 2021, several Board members thanked the public for their comments about the Columbus holiday issues; various Board members recognized that because of the sensitive nature of the matter, as well as the lack of public input, the Board could have “tabled” the matter so that they could do some research and get “input from the public”; Randolph has a “large Italian American population”; one Board member stated, at Board meetings on June 10, 2021, and June 21, 2021, that Respondent’s “motion had crossed the line from policy making to actual operation of the schools”; the Board President confirmed that neither the Superintendent nor the administration had been consulted about Respondent’s motion, the subject matter, or the contents of the motion; and “[c]learly, [Respondent’s] fellow Board members agreed that she had acted well beyond her role as a Board member and that her motion was raised without any consultation of any party affected by her actions.”

Based on the events that occurred on May 13, 2021; June 10, 2021; and June 21, 2021, Complainants assert that Respondent violated *N.J.S.A. 18A:12-24.1(c)*, *N.J.S.A. 18A:12-24.1(e)*, *N.J.S.A. 18A:12-24(b)*, and *N.J.S.A. 18A:12-24(c)* because she “clearly overstepped her bounds as a Board member as she acted to ‘*effectuate policies and plans without consulting those affected by such policies and plans*’ when she raised a walk-on motion with the assumption that all would consider that the change ‘*would strengthen Randolph’s commitment to diversity and inclusion*’” when, in fact, “the opposite was true.” Based on her public comments regarding the issue, “it is clear that [Respondent] pursued a personal agenda influenced by her child’s ethnicity to effect [D]istrict policy and remove Christopher Columbus from the District calendar without consulting or thinking about a larger part of the Randolph” community. In short, when Respondent “made this about her [child’s] reaction and her family’s position on Christopher Columbus, she failed to confine her Board action to policy making, planning and appraisal in her role as a Board member.”

In Count 3, Complainants assert that Respondent “provided false information at the June 21, 2021[,] Board [m]eeting[,] to support her narrative and influence the other members of the Board ... to vote for a motion prompted entirely by her own personal agenda by stating that a public walk-out at the previous [Board] meeting on June 10, 2021[,] occurred immediately after she used the words ‘people of color’ and to disparage those who were not in support of her agenda.” According to Complainants, the minutes and audio from the meeting show that Respondent’s statement is “utterly false,” and that the walk-out “in no way can be attributed to person[al] opinion given the numerous people who spoke, another [Board] member’s outburst[,] and the almost three minutes of chaos that ensued between that phrase [e.g., people of color] and the initiation of the walkout.” Furthermore, Complainants argue that Respondent’s statement about the basis for the walk-out “was designed to create the extremely inflammatory – and utterly false – impression that *all* of the opposition to [Respondent’s] May 13, 2021[,] motion (including the manner in which it was presented), regardless of the identity or background of the

speaker, was motivated by nothing more than blatant and unapologetic racism.” As such, Complainants assert Respondent violated *N.J.S.A.* 18A:12-24.1(g).

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

Following receipt of the Complaint, Respondent filed a Motion to Dismiss and allegation of frivolous filing. Respondent argues that Complainants failed to provide evidence demonstrating that Respondent “made any decision that was contrary to the educational welfare of children or took any action to obstruct programs and policies to meet the individual needs of all children” in violation of *N.J.S.A.* 18A:12-24.1(b). According to Respondent, Complainants only demonstrate that Respondent “introduce[d] a motion” to change the name of a holiday while serving on the DISC, and that the Board unanimously voted to approve the motion. As for the suggestion that Respondent’s statements at a Board meeting (on June 10, 2021) expressing that “Christopher Columbus is not a good role model for children and his name should be removed from the school calendar” somehow indicates that she “made a decision that was contrary to the well-being of the children of Randolph Township,” Respondent submits such a suggestion is “nonsensical.” Respondent maintains that a “vote to change the name of a holiday on the school calendar is not contrary to the educational welfare of children, nor is it obstruction of programs or policies in the schools.” Respondent contends that Complainants have “failed to state a claim” for violations of *N.J.S.A.* 18A:12-24.1(b).”

As for the alleged violations of *N.J.S.A.* 18A:12-24.1(c), Respondent asserts that “‘no policy or plan’ was effectuated by changing the name of the holiday celebrated on the second Monday in October,” nor was “anyone affected by the change.” Furthermore, the date is still a day off for all District students. Respondent further asserts that simply because Complainants “felt impacted by the name change does not transform it into a ‘policy or plan’ for the [D]istrict.” Therefore, Respondent asserts that Complainants have “failed to state a claim” for violations of *N.J.S.A.* 18A:12-24.1(c).

Regarding the alleged violations of *N.J.S.A.* 18A:12-24.1(e), Respondent asserts that Complainants have failed to provide any evidence that Respondent “made any personal promises or took any private action which could have compromised the Board.” According to Respondent, her comments regarding Christopher Columbus (at the June 10, 2021, Board meeting) are “protected free speech,” and she did not take any private action on the proposed name change of the holiday. Furthermore, as the liaison to a subcommittee, Respondent “presented a motion to the full Board during a public meeting and[,] thereafter,” the Board unanimously acted upon the motion. Respondent argues that Complainants allege that 1) Respondent’s husband “commended the Board’s action” to change the name of the holiday, and that 2) Respondent used her child’s “story to manipulate the community”; however, neither of these allegations have the potential to compromise the Board. Respondent further argues that, as a resident of Randolph Township, her husband is entitled to speak about “any matter he so chooses,” and Complainants did not provide any evidence that either Respondent’s or her husband’s opinions regarding Christopher Columbus had the potential to compromise the Board or affected Respondent’s performance as a Board member. Furthermore, Respondent’s discussion about her child’s reaction to the renaming of the holiday “cannot, in any way, be considered an attempt to ‘manipulate the community.’” Therefore, Respondent contends that Complainants have failed to state a claim for violations of *N.J.S.A.* 18A:12-24.1(e).

As for the alleged violations of *N.J.S.A.* 18A:12-24.1(f), Respondent maintains that Complainants did not provide any evidence that Respondent “was aligned with any special interest or political group and took action on their behalf,” nor that Respondent “used the schools for some personal, familial or friend-based benefit.” Respondent further maintains she simply “offered a motion” to change the name of a holiday for all District students, and this motion did not provide a “unique personal benefit to her, nor any other special interest group.” Therefore, Respondent argues Complainants have failed to state a claim for violations of *N.J.S.A.* 18A:12-24.1(f).

Regarding the alleged violation of *N.J.S.A.* 18A:12-24.1(g), Respondent contends the “transcript” that Complainants provided indicates that “the disruption began” following Respondent’s comment, “the district cares about people of color.” However, due to lack of clarity, it is impossible to “know” what truly prompted the unrest in the audience. Respondent further contends that Complainants do not “identify any inaccurate or confidential information” that Respondent allegedly disclosed. On the contrary, Complainants just disagree with Respondent’s “opinion that her language is what prompted the unrest in the audience leading to the walk-out by some attendees.” However, Respondent argues that Complainants did not provide any conclusive facts that the audience began its revolt for a reason(s) other than Respondent’s statement. Moreover, Complainants’ “disagreement with [Respondent’s] comments made in her individual capacity does not establish a violation of the [Act].” Therefore, Respondent maintains that Complainants have failed to state a claim based on a violation of *N.J.S.A.* 18A:12-24.1(g).

As to the alleged violations of *N.J.S.A.* 18A:12-24(b), Respondent asserts the Complaint is “wholly devoid of any factual allegations, which if proven true, suggest that Respondent used her official position to secure any unwarranted privileges, advantages or employment for herself, her immediate family members or others.” Respondent argues that Complainants’ contention that Respondent’s family received an “unwarranted” benefit from renaming the holiday would imply that any Board member “who has a strongly held opinion on an issue to have a conflict of interest when advocating for that belief.” Therefore, Complainants failed to state a claim that Respondent violated *N.J.S.A.* 18A:12-24(b).

Regarding the alleged violations of *N.J.S.A.* 18A:12-24(c), Respondent contends that Complainants have not identified any interest or financial involvement that could have compromised Respondent’s objectivity or independence of judgment, nor have Complainants identified any action that Respondent took that created a benefit to herself or her family. According to Respondent, she proposed a motion to change a holiday for the entire District, and then publicly defended her reasons for doing so. As such, it is clear that Complainants simply did not like Respondent’s opinion or her expression of that opinion. Consequently, Respondent maintains that Complainants have failed to state a claim for violations of *N.J.S.A.* 18A:12-24(c).

Finally, Respondent claims the Complaint is frivolous and Complainants should be sanctioned. Respondent asserts the Complaint “does not have a factual basis,” and Complainants’ “gratuitous inclusion of sensitive, personal and obviously immaterial information about [Respondent], her husband and their [child], demonstrates that it was filed in bad faith to attack a public servant who refused to capitulate to the Complainant[s]’ demands regarding the renaming of a school holiday.” Respondent further asserts the Act should not be used as a weapon against a

Board member who “takes or defends an unpopular action.” Respondent contends Complainants “knew or should have known that their Complaint was without any reasonable basis in law or equity, and could not be supported by a good faith argument for an extension, modification, or reversal of existing law.” Respondent further contends that her statements “were properly disclaimed ... when she stated she was speaking as a resident, mother and individual [B]oard member.” According to Respondent, the Complaint “unjustifiably demonizes a public servant who [] simply made a motion to rename a school holiday and[,] thereafter[,] defended her action to the public during a Board meeting.”

In summary, Respondent argues the Complaint does not contain any facts to support violations of *N.J.S.A. 18A:12-24.1(b)*, *N.J.S.A. 18A:12-24.1(c)*, *N.J.S.A. 18A:12-24.1(e)*, *N.J.S.A. 18A:12-24.1(f)*, *N.J.S.A. 18A:12-24.1(g)*, *N.J.S.A. 18A:12-24(b)*, and/or *N.J.S.A. 18A:12-24(c)* and, therefore, the Commission must dismiss the Complaint and sanction Complainants.

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

In their response to the Motion to Dismiss and allegation of frivolous filing, and regarding the violations of *N.J.S.A. 18A:12-24.1(b)*, Complainants reassert that Respondent “engaged in deliberate action to exclude an entire segment of the Randolph student population, namely, Italian-Americans, who are a protected class, in the service of her own personal needs and beliefs”; “imposed her personal views as more than a [B]oard member and made statements that even curricula needed to ‘progress’ to remove issues of bias (based solely on her personal views)”; “made clear that the concerns of her [child] and her [child’s] racial group trumped the interests and concerns of any other racial or other group in the District”; and “ignored the importance of the Columbus Day holiday and the role of Christopher Columbus himself in establishing our nation to the Italian-American community” Complainants assert by doing this, Respondent did not “make decisions in terms of the educational welfare of ... all children regardless of their ability, race, creed, sex, or social standing.” Complainants maintain that “all” children “includes the Italian-American community, and those students were not included in Respondent’s decision-making process. As such, Complainants maintain that their supporting evidence is “more than sufficient” to support a violation of *N.J.S.A. 18A:12-24.1(b)*.

As for the violations of *N.J.S.A. 18A:12-24.1(c)*, Complainants assert that Respondent’s decision to remove Columbus Day from the calendar “created a division within the community,” and clearly “affected” many residents. According to Complainants, Respondent “cannot ignore the undisputed facts that she proceeded without the necessary community input and involvement on a matter of major social importance,” and, as a result, violated *N.J.S.A. 18A:12-24.1(c)*.

Regarding the violations of *N.J.S.A. 18A:12-24.1(e)*, Complainants maintain that Respondent “admitted” “that her motivation for raising the calendar change motion was entirely personal and rooted in serving the interests of her own family.” Complainants reaffirm that Respondent’s actions were “driven by [her] impulsive, personal needs,” and she did not offer any evidence to support that her actions were “well reasoned balanced and impartial.” Complainants further reaffirm that Respondent “consistently discussed her personal family motivation throughout her public comments” about the issue. Complainants contend that the Complaint

“sets forth clear evidence that [Respondent] took private action compromising the Board, and her wholly conclusory arguments to the contrary should be disregarded.”

As for the violations of *N.J.S.A.* 18A:12-24.1(f), Complainants argue that Respondent’s reasoning that she made the motion to change the holiday name “to benefit all Randolph children” is “disingenuous, as it arrogantly assumes – without any effort to obtain any form of empirical support or even anecdotal evidence through a community outreach on the issue – that ‘all Randolph children’ wanted this change.” Complainants further argue Respondent stated her decision to change the holiday name was “as a mother,” and that is when she “surrendered her independent judgment as a Board member.” Complainants assert that Respondent never discussed the name change with the District or with the Board prior to making her motion. Accordingly, Complainants assert they have provided enough evidence to support violations of *N.J.S.A.* 18A:12-24.1(f).

Regarding the violation of *N.J.S.A.* 18A:12-24.1(g), Complainants maintain that Respondent did not “‘provide accurate information’ when recounting the events of the June 10, 2021[,] Board meeting during the June 21, 2021[,] Board meeting, and used the facts she provided in an intentional effort to mischaracterize what actually happened at the former meeting.” Complainants further assert Respondent’s “mischaracterization” “created the false – and highly offensive – impression that everyone who spoke out against her calendar change motion ... is a card-carrying racist.” Complainants contend the “proof lies in the transcripts,” and Respondent’s “comments cannot reasonably be attributed to an honest or reasonable mistake.” Complainants argue that Respondent did not offer any evidence “to contradict the compelling evidence included in the Complaint,” and Respondent’s “version of the events is simply not true.

As to the violations of *N.J.S.A.* 18A:12-24(b), Complainants reassert that Respondent “went out of her way at both the June 10 and June 21 meetings to make a point of telling the story of her [child].” According to Complainants, in doing so, Respondent “felt the need to raise the color of her [child’s] skin multiple times, and to repeatedly use the phrase ‘people of color’” in an effort “to make the issue ... on the calendar a racial one, where no such issue previously existed.” Complainants assert this issue was “personally important” to Respondent because it “related to the racial context of her own home.” As such, Respondent’s actions “improperly sought to impose her subjective family values and the lessons taught in her own home on all of the children of Randolph.” Complainants contend Respondent’s “personal opinions motivated her actions in presenting the calendar change motion ...,” and Respondent’s position as a Board member enabled her to “seek this goal in this manner.” This, according to Complainants, is an example of “using one’s office to ‘*secure unwarranted privileges [and] advantages,*’” namely the removal of Columbus Day from the school calendar.

Regarding the violations of *N.J.S.A.* 18A:12-24(c), Complainants reassert that Respondent “pursue[d] a personal agenda driven only by her child’s ethnicity to effect [D]istrict policy by removing Christopher Columbus and Columbus Day from the District’s school calendar without consulting or thinking about a larger part of the Randolph population she represents.” Based on her conduct, Respondent clearly violated *N.J.S.A.* 18A:12-24(c) as set forth in the Complaint.

Finally, Complainants argue the Complaint is not frivolous, and was not filed in bad faith or to harass Respondent. Complainants note, “Bringing these issues to the attention of those who can discipline that person is likewise not an act of bad faith or harassment, but a sincere effort to hold a rogue Board member accountable for her actions.” According to Complainants, the Complaint “alleges facts sufficient to maintain violations of multiple provisions of the [Act],” and the Commission should deny Respondent’s request for dismissal and sanctions.

III. Analysis

A. Standard for Motion to Dismiss

In determining whether to grant a Motion to Dismiss, the Commission shall review the facts in the light most favorable to the non-moving party (Complainants), and determine whether the allegation(s), if true, could establish a violation of the Act. Unless the parties are otherwise notified, a Motion to Dismiss and any response is reviewed by the Commission on a summary basis. *N.J.A.C. 6A:28-8.1 et seq.* Thus, the question before the Commission is whether Complainants have alleged sufficient facts which, if true, could support a finding that Respondent violated *N.J.S.A. 18A:12-24.1(b)* in Count 1, *N.J.S.A. 18A:12-24.1(c)* in Count 2, *N.J.S.A. 18A:12-24.1(e)* in Counts 1-2, *N.J.S.A. 18A:12-24.1(f)* in Count 1, *N.J.S.A. 18A:12-24.1(g)* in Count 3, *N.J.S.A. 18A:12-24(b)* in Counts 1–2, and/or violated *N.J.S.A. 18A:12-24(c)* in Counts 1-2.

B. Jurisdiction of the Commission

In reviewing the claims 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 Complainants seek a determination from the Commission that Respondent’s spouse, who is not a school official, may have violated the Act or contributed to Respondent’s purported violations of the Act, the Commission advises that such determinations fall outside the scope, authority, and jurisdiction of the Commission. As such, those claims are dismissed.

C. Alleged Prohibited Acts

In the Complaint, Complainants contend that Respondent violated *N.J.S.A. 18A:12-24(b)* and *N.J.S.A. 18A:12-24(c)* in Counts 1–2. These provisions of the Act provide:

- b. No school official shall use or attempt to use his official position to secure unwarranted privileges, advantages or employment for himself, members of his immediate family or others;
- 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;

Alleged Violations of N.J.S.A. 18A:12-24(b)

(Counts 1–2)

In **Count 1**, Complainants argue Respondent violated *N.J.S.A. 18A:12-24(b)* because she “clearly” defended “her family and used her position [as a Board member] to gain unwarranted advantages.” Complainants submit that, given the strong opinions expressed by both Respondent and her husband and “the story told about their [child’s] reaction,” they “sought to remove Columbus Day from the calendar to benefit the narrative they wished to teach their [child] without any respect for the rest of the families of Randolph Township.”

In addition, and in **Count 2** of the Complaint, Complainants argue Respondent violated *N.J.S.A. 18A:12-24(b)* because, based on her public comments at multiple Board meetings following her “walk-on” motion, “it is clear that [Respondent] pursued a personal agenda influenced by her child’s ethnicity to effect [D]istrict policy and remove Christopher Columbus from the District calendar.” Per Complainants, Respondent “improperly sought to impose her subjective family values and the lessons taught in her own home on all of the children of Randolph,” and her position as a Board member enabled her to “seek this goal in this manner.”

Respondent counters that the alleged violations of *N.J.S.A. 18A:12-24(b)* in Count 1 and Count 2 are wholly devoid of any facts which, even if proven true, suggest that Respondent used her official position to secure any unwarranted privileges, advantages or employment for herself, her immediate family members or others. Respondent argues that Complainants’ contention that Respondent’s family received an “unwarranted” benefit from renaming the holiday would imply that any Board member “who has a strongly held opinion on an issue to have a conflict of interest when advocating for that belief.”

In order to credit the alleged violations of *N.J.S.A. 18A:12-24(b)* in Count 1 and/or Count 2, the Commission must find evidence that Respondent used or attempted to use her official position to secure an unwarranted privilege, advantage or employment for herself, members of her immediate family, or “others.”

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 findings that Respondent violated *N.J.S.A. 18A:12-24(b)*. Boiled down to its essence, Complainants argue that by reading a “walk on” motion to change the name of Columbus Day on the District calendar, and then voting in favor of the motion, Respondent used her position as a Board member to secure unwarranted privileges, advantage, or employment for herself and/or family. To bolster their argument, Complainants cite to, and rely upon, Respondent’s statements at Board meetings *after* the motion was made, and the vote occurred. Regardless of whether the motivation for Respondent’s motion and vote is popular or well-received, making a motion and then voting in

favor of same cannot, under any set of circumstances, constitute use of one's position to secure an unwarranted privilege, advantage, or employment. Moreover, absent approval and action by the Board, it would have been impossible for Respondent's motion and singular vote to effectuate any kind of change. Of note, the impact of *the Board's vote* impacted the entire District, and did not result in any specific or unique "benefit" to Respondent and/or her family *alone*. Therefore, the Commission finds that the violations of *N.J.S.A. 18A:12-24(b)* in Count 1 and Count 2 should be dismissed.

Alleged Violations of N.J.S.A. 18A:12-24(c)

(Counts 1–2)

In **Count 1**, Complainants claim that Respondent violated *N.J.S.A. 18A:12-24(c)* because Respondent "used her position to raise the original motion and make a statement about Christopher Columbus, with no opportunity for the public to correct her disparaging remarks about Christopher Columbus or provide background on the history of the holiday prior to the vote"

Furthermore, and in **Count 2** of the Complaint, Complainants claim Respondent violated *N.J.S.A. 18A:12-24(c)* because, based on her public comments regarding the issue (of renaming Columbus Day), "it is clear that [Respondent] pursued a personal agenda influenced by her child's ethnicity to effect [D]istrict policy and remove Christopher Columbus from the District calendar without consulting or thinking about a larger part of the Randolph" community.

Respondent counters that Complainants have not identified any interest or financial involvement that could have compromised Respondent's objectivity or independence of judgment, nor have Complainants identified any action that Respondent took that created a benefit to herself or her family. According to Respondent, she simply proposed a motion to change a holiday for the entire District, and then publicly defended her reasons for doing so.

To credit the alleged violations of *N.J.S.A. 18A:12-24(c)* in Count 1 and/or Count 2, the Commission must find evidence that Respondent acted in her official capacity in a matter where she, or a member of her immediate family, or a business organization in which she had an interest, had a direct or indirect financial involvement that might reasonably be expected to impair her objectivity, or in a matter where she had a personal involvement that created some benefit to her, a member of her immediate family, or to "others."

Based on its review of the Complaint, the Commission finds that even if the facts as claimed are proven true by sufficient credible evidence, they would not support findings that Respondent violated *N.J.S.A. 18A:12-24(c)*. In this regard, Complainants have not provided any facts evidencing that Respondent (or a member of her immediate family, or a business organization in which she has an "interest") had a "direct or indirect financial involvement" in the reading of the "walk on" motion to change the name of Columbus Day on the District calendar, and/or in the vote in favor of the motion. In addition, there are no facts demonstrating that Respondent had a personal involvement in the reading of the motion and/or the vote that created a benefit *to her, a member of her immediate family, or to an "other."* Of critical importance is the fact that the reading of the motion and the vote had District wide implications *if approved by the Board*, and did not uniquely or solely benefit Respondent and/or her family.

The fact that the reading of the motion and the vote may have aligned with Respondent’s personal beliefs/position on a controversial issue is of no consequence. As such, the Commission finds that the violations of *N.J.S.A. 18A:12-24(c)* in Count 1 and Count 2 should be dismissed.

D. *Alleged Code Violations*

Complainants additionally allege that Respondent violated *N.J.S.A. 18A:12-24.1(b)* in Count 1, *N.J.S.A. 18A:12-24.1(c)* in Count 2, *N.J.S.A. 18A:12-24.1(e)* in Counts 1–2, *N.J.S.A. 18A:12-24.1(f)* in Count 1, and *N.J.S.A. 18A:12-24.1(g)* in Count 3. These provisions of the Code state:

- b. I will make decisions in terms of the educational welfare of children and will seek to develop and maintain public schools that meet the individual needs of all children regardless of their ability, race, creed, sex, or social standing.
- c. I will confine my board action to policy making, planning, and appraisal, and I will help to frame policies and plans only after the board has consulted those who will be affected by them.
- e. I will recognize that authority rests with the board of education and will make no personal promises nor take any private action that may compromise the board.
- f. I will refuse to surrender my independent judgment to special interest or partisan political groups or to use the schools for personal gain or for the gain of friends.
- g. I will hold confidential all matters pertaining to the schools which, if disclosed, would needlessly injure individuals or the schools. In all other matters, I will provide accurate information and, in concert with my fellow board members, interpret to the staff the aspirations of the community for its school.

Alleged Violation of N.J.S.A. 18A:12-24.1(b)

(Count 1)

In **Count 1**, Complainants assert Respondent violated *N.J.S.A. 18A:12-24.1(b)* “[b]y rejecting Columbus and making defamatory and disparaging statements about him, [Respondent] engaged in deliberate action to exclude an entire segment of the Randolph student population in the service of her own personal needs and beliefs,” as “the only race and creed that matters to [Respondent] is that of her own [child].”

Respondent counters that Complainants failed to provide evidence demonstrating that Respondent “made any decision that was contrary to the educational welfare of children or took any action to obstruct programs and policies to meet the individual needs of all children” in violation of *N.J.S.A. 18A:12-24.1(b)*. Instead, Complainants only demonstrate that Respondent

“introduce[d] a motion” to change the name of a holiday while serving on the DISC, and that the Board unanimously voted to approve the motion. Respondent maintains that a “vote to change the name of a holiday on the school calendar is not contrary to the educational welfare of children, nor is it obstruction of programs or policies in the schools.”

As set forth in *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 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.

After review of the Complaint, the Commission finds that even if the facts as asserted are proven true by sufficient credible evidence, they would not support a finding that Respondent violated *N.J.S.A. 18A:12-24.1(b)*. Neither the reading of the “walk on” motion to change the name of Columbus Day on the District calendar, and/or in the vote in favor of the motion constitutes a “decision” relating to the welfare of children and/or “action” relating to programs or policies. Instead, both the reading of the motion and the related vote concerned the renaming of an already existing District holiday. There is no evidence or factual averments sufficient to support an argument that the name change could possibly affect and/or relate to the delivery of instruction. Therefore, the Commission finds that the violation of *N.J.S.A. 18A:12-24.1(b)* in Count 1 should be dismissed.

Alleged Violation of N.J.S.A. 18A:12-24.1(c)

(Count 2)

In **Count 2**, Complainants contend Respondent violated *N.J.S.A. 18A:12-24.1(c)* because she “clearly overstepped her bounds as a Board member as she acted to ‘*effectuate policies and plans without consulting those affected by such policies and plans*’ when she raised a walk-on motion with the assumption that all would consider that the change ‘*would strengthen Randolph’s commitment to diversity and inclusion.*” According to Complainants, when Respondent “made this about her [child’s] reaction and her family’s position on Christopher Columbus, she failed to confine her Board action to policy making, planning and appraisal in her role as a Board member.”

Respondent submits that “‘no policy or plan’ was effectuated by changing the name of the holiday celebrated on the second Monday in October,” nor was “anyone affected by the change.”

Pursuant to *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 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.

Based on its review of the Complaint, 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:12-24.1(c)*. Once again, neither the reading of the “walk on” motion to change the name of Columbus Day on the District calendar, and/or Respondent’s vote in favor of the motion can be regarded as “action” to effectuate District “policies and plans.” Contrary to Complainants’ position, neither Respondent’s motion nor vote to rename an already existing District holiday (and day off) could result in the effectuation of a policy or plan unless approved by the Board as a body. In addition, it is the Board’s prerogative to manage the District’s calendar and to revise it as it sees fit. As a result, the Commission finds that the violation of *N.J.S.A. 18A:12-24.1(c)* in Count 2 should be dismissed.

Alleged Violation of N.J.S.A. 18A:12-24.1(e)

(Counts 1–2)

As set forth in *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 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.

In **Count 1**, Complainants argue Respondent violated *N.J.S.A. 18A:12-24.1(e)* “[b]y pursuing a personal agenda to exorcise Christopher Columbus from the ... District and impress her and her husband’s opinions of him upon the community without 1) disclosing that it was her husband speaking and 2) using her [child’s] story to manipulate the community” to pursue a “personal issue” important to her (Respondent) and her family.

In addition, and in **Count 2** of the Complaint, Complainants argue Respondent violated *N.J.S.A. 18A:12-24.1(e)* because she “clearly overstepped her bounds as a Board member as she acted to ‘*effectuate policies and plans without consulting those affected by such policies and plans*’ when she raised a walk-on motion with the assumption that all would consider that the change ‘*would strengthen Randolph’s commitment to diversity and inclusion.*”

Respondent counters that Complainants have failed to provide any evidence that Respondent “made any personal promises or took any private action which could have compromised the Board.” According to Respondent, her comments regarding Christopher Columbus are “protected free speech,” and she did not take any private action on the proposed name change of the holiday.

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 findings that Respondent violated *N.J.S.A. 18A:12-24.1(e)*. Both the reading of motions and voting on pending motions clearly fall within the duties and responsibilities of a Board member, even if, as here, the subject of the motion(s) and/or a Board member’s individual vote(s) is not well-received or highly regarded by the public. Therefore, the Commission finds that the violations of *N.J.S.A. 18A:12-24.1(e)* in Count 1 and Count 2 should be dismissed.

Alleged Violation of N.J.S.A. 18A:12-24.1(f)

(Count 1)

In **Count 1**, Complainants claim Respondent violated *N.J.S.A. 18A:12-24.1(f)* because her “motion would have benefited the narrative that she and her husband seek to teach their child

that Columbus ‘*is a murderous colonizer.*’” Complainants further contend that “the issue related to Christopher Columbus and his name on the [D]istrict calendar are clearly related to an issue that [Respondent’s] family had and which [Respondent] acted upon on behalf of her family without concern for the community at large.”

Respondent counters that Complainants did not provide any evidence that Respondent “was aligned with any special interest or political group and took action on their behalf,” nor that Respondent “used the schools for some personal, familial or friend-based benefit.” Respondent further maintains she simply “offered a motion” to change the name of a holiday for all District students, and this motion did not provide a “unique personal benefit to her, nor any other special interest group.”

As set forth in *N.J.A.C. 6A:28-6.4(a)(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 herself, a member of her immediate family or a friend.

Based on its review of the Complaint, the Commission finds that even if the facts as claimed are proven true by sufficient credible evidence, they would not support a finding that Respondent violated *N.J.S.A. 18A:12-24.1(f)*. The Commission agrees with Respondent that Complainants have not articulated any facts indicating that Respondent took action on behalf of, or at the request of, a special interest group (or persons organized and voluntarily united), or that Respondent used the schools in order to acquire a benefit for herself, a member of her immediate family, or a friend. Even if Respondent made a motion to rename a District holiday and voted in favor of it because she may have believed it was “right” or a “good example” for her child, because the outcome of the motion was decided by the entirety of the Board (and not by Respondent alone), and the outcome did not result in Respondent or her family receiving an individualized benefit, a violation of this subsection cannot be sustained. As a general matter, Board members are oftentimes guided by their own personal opinions and beliefs about a particular issue or cause, and unless their conduct or action exceeds the scope of their authority or is otherwise unethical, which is not the case here, Board members are free to do so. Therefore, the Commission finds that the violation of *N.J.S.A. 18A:12-24.1(f)* in Count 1 should be dismissed.

Alleged Violation of N.J.S.A. 18A:12-24.1(g)

(Count 3)

In **Count 3**, Complainants assert Respondent violated *N.J.S.A. 18A:12-24.1(g)* because she “provided false information” at the June 21, 2021, Board meeting by stating that a public walk-out at the previous Board meeting (on June 10, 2021) occurred immediately after she used the words “people of color.” Complainants maintain that the minutes and audio from the meeting show that Respondent’s statement is “utterly false,” and that the walk-out “in no way can be attributed to” Respondent’s statement given the “almost three minutes of chaos that ensued between that phrase [e.g., people of color] and the initiation of the walkout.”

Respondent counters that the “transcript” that Complainants provided indicates that “the disruption began” following Respondent’s comment, “the district cares about people of color.” However, due to lack of clarity, it is impossible to “know” what truly prompted the unrest in the audience. Moreover, Complainants did not provide any conclusive facts verifying that the revolt was caused for any reason(s) other than Respondent’s statement.

Pursuant to *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 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.

After review of the Complaint, the Commission finds that even if the facts as asserted are proven true by sufficient credible evidence, they would not support a finding that Respondent violated *N.J.S.A. 18A:12-24.1(g)*. Based on the evidence and factual support submitted by Complainants, the Commission finds that it is nebulous, at best, what specific issue(s) or comment(s) may have led to the devolvement of order at the Board’s meeting. Without any clear basis which can establish what caused the walk-out, the Commission finds that the violation of *N.J.S.A. 18A:12-24.1(g)* in Count 3 should be dismissed.

Accordingly, and granting all inferences in favor of the non-moving party (Complainants), the Commission has determined to grant the Motion to Dismiss in its entirety because Complainants failed to plead sufficient, credible facts to support a finding that Respondent violated *N.J.S.A. 18A:12-24.1(b)* in Count 1, *N.J.S.A. 18A:12-24.1(c)* in Count 2, *N.J.S.A. 18A:12-24.1(e)* in Counts 1–2, *N.J.S.A. 18A:12-24.1(f)* in Count 1, *N.J.S.A. 18A:12-24.1(g)* in Count 3, *N.J.S.A. 18A:12-24(b)* in Counts 1–2, and/or *N.J.S.A. 18A:12-24(c)* in Counts 1–2.

IV. Request for Sanctions

At a special meeting on August 30, 2021, the Commission considered Respondent’s request that the Commission find the Complaint frivolous, and impose sanctions pursuant to *N.J.S.A. 18A:12-29(e)*. Despite Respondent’s argument, the Commission cannot find evidence that might show that Complainants filed the Complaint in bad faith or solely for the purpose of harassment, delay, or malicious injury. The Commission also does not have information to suggest that Complainants knew or should have known that the Complaint was without any reasonable basis in law or equity, or that it could not be supported by a good faith argument for an extension, modification or reversal of existing law. *N.J.A.C.* 6A:28-1.2. Therefore, at its meeting on September 21, 2021, the Commission voted to find the Complaint not frivolous, and to deny the request for sanctions.

V. Decision

Based on the foregoing, and in reviewing the facts in the light most favorable to the non-moving party (Complainants), the Commission voted to **grant** the Motion to Dismiss in its entirety because Complainants failed to plead sufficient, credible facts to support a finding that Respondent violated *N.J.S.A.* 18A:12-24.1(b) in Count 1, *N.J.S.A.* 18A:12-24.1(c) in Count 2, *N.J.S.A.* 18A:12-24.1(e) in Counts 1–2, *N.J.S.A.* 18A:12-24.1(f) in Count 1, *N.J.S.A.* 18A:12-24.1(g) in Count 3, *N.J.S.A.* 18A:12-24(b) in Counts 1–2, and/or *N.J.S.A.* 18A:12-24(c) in Counts 1–2. 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 Complainants and Respondent that, for the reasons set forth above, this matter is dismissed. This decision is a final decision of an administrative agency and, therefore, it is appealable only to the Superior Court-Appellate Division. *See, New Jersey Court Rule 2:2-3(a).*

Robert W. Bender, Chairperson

Mailing Date: September 21, 2021

***Resolution Adopting Decision
in Connection with C22-21***

Whereas, at a special meeting on August 30, 2021, the School Ethics Commission (Commission) considered the Complaint, the Motion to Dismiss in Lieu of Answer (Motion to Dismiss) and allegation of frivolous filing, and the response to the Motion to Dismiss and allegation of frivolous filing submitted in connection with the above-referenced matter; and

Whereas, at a special meeting on August 30, 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(b) in Count 1, *N.J.S.A.* 18A:12-24.1(c) in Count 2, *N.J.S.A.* 18A:12-24.1(e) in Counts 1–2, *N.J.S.A.* 18A:12-24.1(f) in Count 1, *N.J.S.A.* 18A:12-24.1(g) in Count 3, *N.J.S.A.* 18A:12-24(b) in Counts 1–2, and/or *N.J.S.A.* 18A:12-24(c) in Counts 1–2; and

Whereas, at a special meeting on August 30, 2021, the Commission discussed finding the Complaint not frivolous, and denying Respondent’s request for sanctions; and

Whereas, at its meeting on September 21, 2021, the Commission reviewed and voted to approve the within decision as accurately memorializing its actions/findings from its special meeting on August 30, 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 September 21, 2021.

Kathryn A. Whalen, Director
School Ethics Commission