

HEARING DATE: AUGUST 14, 2024

**STATE OF RHODE ISLAND
PROVIDENCE, SC.**

SUPERIOR COURT

NICOLE SOLAS,

Plaintiff,

v.

C.A. No.: PC-2022-04727

**SOUTH KINGSTOWN SCHOOL
COMMITTEE**

Defendant.

**MEMORANDUM OF LAW IN SUPPORT OF
DEFENDANT, SOUTH KINGSTOWN SCHOOL COMMITTEE'S
OBJECTION TO PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT AND
CROSS-MOTION FOR SUMMARY JUDGMENT**

Now comes the South Kingstown School Committee (hereinafter the "School Committee"), Defendant in the above-captioned matter, and hereby objects to Plaintiff, Nicole Solas's (hereinafter "Solas") Motion for Summary Judgment and also respectfully moves this Honorable Court for an Order such that the School Committee is entitled to judgment as a matter of law for the reasons set forth herein.

I. FACTS

A. Background

At the beginning of the summer of 2020, as explained by School Committee member, Katherine Macinanti, (hereinafter "Macinanti") the School Committee endeavored to take proactive measures to ensure that the South Kingstown School District (hereinafter the "District") was "participating in equity" and focusing on discussions within the schools to ensure that the District was not operating "a racist school system." *See*. Macinanti Dep. 13:16-21, October 3, 2023 at "***Exhibit A.***" In furtherance of this effort, during a June 23, 2020 meeting of

the School Committee, the Committee listened to a presentation by Robin Wildman, in which she gave an overview of the mission of Nonviolent Schools RI (hereinafter “NSRI”) and suggested how NSRI could assist the School Committee in ensuring equity throughout the school system. A copy of the June 23, 2020 meeting minutes is attached hereto as “***Exhibit B.***”

B. Nonviolent Schools RI

By way of explanation, Wildman is the Executive Director of NSRI and also a former teacher in the District who retired in 2019. *See*. Wildman Dep. 11:11-18; 14:15-24, September 29, 2023 at “***Exhibit C.***” NSRI is a private, non-profit organization that is tax-exempt under Section 501(c)(3) of the Internal Revenue Code, with a mission “to teach educators and administrators in grades k through college age the philosophy and strategies of Dr. Martin Luther King, Jr., so that [they] can improve the climate and culture of the school communities or help – help improve it.” *See. Id.*, Wildman Dep. at 12:23-13:2.

C. “Creation” of the BIPOC Board

During the June 23, 2020 meeting, Wildman explained a “two-tiered approach for change,” with tier one being the creation of a task force made up of students and community members who would be charged with “talk[ing] about experiences people of color experienced in the school system in South Kingstown” and tier two being non-violence training/professional development for community, staff and leadership. *See. Id.*, Wildman Dep. at 17:12-19:2; *See also. Exhibit B.* At the meeting, School Committee Chair, Stephanie Canter, suggested that the “task force” be referred to as an “advisory board”; to the best of Wildman’s recollection, Canter just “liked the name better.” *See. Id.*, Wildman Dep. at 18:5-14; *See also. Exhibit B.* There were no votes taken or decisions made with respect to this presentation at the June 23, 2020 meeting. *See. Exhibit B.*

At the July 22, 2020 School Committee meeting, the Committee voted “to create an equity and antiracist advisory board, crated *[sic]* and charged by Robin Wildman and Jonathan Lewis.”¹ A copy of the July 22, 2020 meeting minutes is attached hereto as “***Exhibit D.***” Sarah Markey, the Vice Chair of the School Committee, explained that Wildman and Lewis would “set up the structure, member *[sic]* and process and then get compensated.”² *See. Id.* Wildman represented to the Committee that they would “center the advisory board around the experts and experiences of the BIPOC community.”³

D. Facilitation of the BIPOC Board

In keeping with the vote of the School Committee, Wildman, in her capacity as Executive Director of NSRI, facilitated the BIPOC Advisory Board (hereinafter the “BIPOC Board”), which included recruiting members, planning agendas, setting dates for meetings and securing meeting places (when the Board was not meeting virtually due to COVID-19 protocols) and ensuring “a safe place for people to be able to share their traumas and experiences.” *See. Exhibit C*, Wildman Dep. at 31:12-33:18. The members of the School Committee had no role in selecting the members of the BIPOC Board, and at least one School Committee member, Emily Cummiskey, had no knowledge of the identities of the members of the BIPOC Board. *See. Exhibit A*, Macinanti Dep. at 62:22-24; *See. also.* Cummiskey Dep. 29:7-8, June 27, 2023 at “***Exhibit E.***”

¹ This motion was listed under “item (I),” entitled “Discussion/Action: Creation of equity & antiracist advisory board, *created* and charged by Robin Wildman and Jonathan Lewis.” (Emphasis added.)

² Lewis was a senior trainer and Director of Youth Training for NSRI. *See. Exhibit C*, Wildman Dep. at 86:23-87:5.

³ The acronym “BIPOC” stands for “Black, Indigenous, (and) People of Color.”

E. The “Purpose” of the Board

At its inception, the purpose of the BIPOC Board was for the members to discuss experiences that people of color have had in relation to the School District. *See. Exhibit C*, Wildman Dep. at 18:25-19:1. Members on the BIPOC Board who were parents described some experiences and the BIPOC Board processed those experiences and tried find a way to make suggestions of ways that the District could “improve things for all students, including the BIPOC students and parents and families. *See. Id.*, Wildman Dep. at 19:2-7. At the outset, it was not the intention of the BIPOC Board to provide suggestions regarding School Committee policies; however, as the members started listening to the feedback offered during their gatherings, they decided that they “wanted to understand how the current policies spoke to the issues that [they] were hearing,” and therefore the BIPOC Board started reviewing policies they thought related to the experiences they had/were learning about in an attempt to “understand how they needed to be changed.” Gitahi Dep. at 24:20-25:3, December 19, 2023 at “*Exhibit F.*” It became an opportunity for the BIPOC community to offer their perspective with respect to how the School Committee’s policies impacted them. *See. Exhibit A*, Macinanti Dep. at 13:3-9.

Per School Committee member Macinanti, the Committee invites members of its community to join various groups that it works with for work sessions to get their input because as elected officials, they like to get the perspective of their community members; the Committee likes “to hear from the public to make sure that [they’re] representing them properly and adequately.” *See. Id.*, Macinanti Dep. at 24:14-25. The feedback provided by the BIPOC Board was merely in the nature of suggestions, as opposed to any type of formal recommendation. *See. Exhibit C*, Wildman Dep. at 34:16-21.

F. BIPOC Board Composition

The BIPOC Board was composed solely of volunteers from the community; none of the members received any type of compensation for their time and efforts. *See. Exhibit A*, Macinanti Dep. at 14:8-9; *See also. Affidavit and Response of Robin Wildman at “Exhibit G”*.⁴ The BIPOC Board did not have a set membership; sometimes a dozen people would show up to a meeting, other times two (2) dozen individuals would attend. *See. Exhibit F*, Gitahi Dep. at 15:2-20. The “core group” of attendees included five (5) or six (6) individuals. *See. Id.* There were no School Committee members or District Administrators on the BIPOC Board. *See. Markey Dep. 58:11-13, August 18, 2023 at “Exhibit H.”; See also. Exhibit A*, Macinanti Dep. at 22:16-17; *See also. Exhibit C*, Wildman Dep. at 40:7-41:4; *See also. Exhibit G*. Moreover, School Committee members did not attend BIPOC Board meetings, and the Superintendent of Schools, Linda Savastano, along with the Director of Curriculum, Ginamarie Masiello, only attended one BIPOC meeting after receiving an invitation from Wildman; however they did not participate in the meeting, but just observed and thanked the members for their efforts. *See. Id.*

G. The Structure of the BIPOC Board

The BIPOC Board was informal; as explained by member Gitahi:

I didn’t hold an official position, and I didn’t – we didn’t interact in an official capacity. We didn’t vote on anything. We didn’t really – we didn’t pass policy resolutions or anything like that. It was kind of informal – a chance to meet informally and to talk in a – to create like a safe environment, a safe space that was welcoming and then to talk about issues that people who identified as BIPOC were experiencing in the school district, both students and parents of students and other community members. So it was more of like just conversations each week. *See. Exhibit F*, Gitahi Dep. at 16:9-21.

The group would listen to the experiences of the members and then provide insight to the District with respect to any issues they identified, such as discrimination, harassment, hiring practices

⁴ Wildman’s Affidavit was submitted in response to the Plaintiff’s Open Meetings Act complaint that was filed with the Office of the Attorney General, which will be addressed *infra*.

and representation, and the like. *See. Id.* at 20:17-21:14. The BIPOC Board did not have specific agendas for the meetings, but rather, they were open discussions. *See. Id.* at 21:15-18.

Additionally, when the BIPOC Board first started meeting in August of 2020, they had meetings on a weekly basis; however, at some point it decreased to every other week and as less and less people attended the meetings, they became more infrequent. *See. Exhibit C*, Wildman Dep. at 42:1-24.

H. Membership

Ultimately, Wildman had the authority to decide who would become a member of the BIPOC Board. *See. Exhibit C*, Wildman Dep. at 107:16-18. Wildman requested that non-BIPOC individuals interested in joining the BIPOC Board wait until they were able to gather the stories and experiences of the BIPOC members before they began attending meetings. *See. Exhibit C*, Wildman Dep. at 45:1-9. Wildman did not assess whether an individual was BIPOC, but rather, it was “for everybody to define themselves.” *See. Id.* at 45:17-22. Wildman testified that with respect to the BIPOC Board meetings, they considered whoever showed up to the first meeting to be a member of the Board; she was not the determiner of whether someone identified as BIPOC, nor did she ever inquire as to how individual attendees identified themselves. *See. Id.* at 110:18-111:13. Wildman did open up the BIPOC Board to individuals who did not identify as BIPOC. *See. Id.* at 115:12-20. The School Committee was not involved in the decision by NSRI, through Wildman, to ask non-BIPOC individuals to “hold off” on attending BIPOC Board meetings while they discussed experiences. *See. Exhibit A*, Macinanti Dep. at 28:1-18.

Gitahi testified that it was his understanding that if someone who was not BIPOC wanted to attend a BIPOC Board meeting, they could do so. *See. Exhibit F*, Gitahi Dep. 30:8-20. He stated that while the conversations between members would not have been as open or

comfortable, they did not intentionally exclude individuals because they did not identify as BIPOC. *See Id.* While it was not common, individuals who did not identify as BIPOC, such as parents of BIPOC students, did attend BIPOC Board meetings. *See Id.* at 32:1-11.

Wildman did not deny Solas's request to attend BIPOC Board meetings because Solas did not identify herself as BIPOC; but rather because Wildman felt duty-bound to protect NSRI and the BIPOC Board members from being harassed by Solas. *See. Exhibit C*, Wildman Dep. at 112:16- 24; 116:9-22. Specifically, when asked the basis on which Wildman precluded Solas from attending meetings, Wildman stated "I was concerned about her tone and her harassment of me on social media. And quite frankly, I was a little bit alarmed by her aggressiveness and what she could do to me and possibly – I don't know what she would do if she came to a meeting or if she found out where I lived. So I was a little bit fearful." *See. Id.* at 112:19-24. Wildman also testified that she would not have permitted Solas to participate in BIPOC Board meetings if she did identify as BIPOC, explaining:

As I stated before, her harassment of me and unkind words that she used against people who were on the board made me afraid. And, in fact, when she started sending those emails and posting those things on social media, we lost quite a few members because they were afraid. *See Id.* at 116:9-22.

Wildman was not a member of the BIPOC Board, but rather, as mentioned above, was facilitating the meetings in her position as Executive Director of NSRI. *See. Exhibit G; See also. Exhibit F*, Gitahi Dep. at 80:15-17.

I. Compensation

NSRI submitted a proposal to the District to gather the members, create agendas, and facilitate and host BIPOC Board meetings. *See. Exhibit C*, Wildman Dep. at 81:6-24. NSRI received \$4,999.00 to facilitate these meeting and provide some conflict reconciliation training in the District. *See Id.* at 82:11-20. NSRI received no other compensation for its work. *See Id.* at

82:23-83:2. NSRI began facilitating the BIPOC meetings in August of 2020, and continued to do so until the payment started to approach the monetary limit on the Superintendent's procurement authority, at which time, the District posted a Request for Proposals (hereinafter "RFP"). *See Id.* at 81:6-24.

In addition to approaching the monetary limit on small purchases not requiring an RFP, the School Committee decided that it wanted to expand the scope of services beyond facilitation of the BIPOC Board meetings and conflict reconciliation training. *See* Savastano Dep. 70:21-76:16. October 30, 2023 at "***Exhibit I.***" NSRI submitted a response to the RFP and was awarded a contract for services to be provided for the period of February 15, 2021 through August 31, 2021. A copy of the Parties' Independent Contractor Agreement (the "Contract") is attached hereto and incorporated herein as "***Exhibit J.***"

Pursuant to the Contract, in addition to facilitating twenty-five (25) meetings between February- August of 2021, NSRI was required to provide twenty (20) hours of Kingian Nonviolence training to District employees; conduct three (3) Kingian Nonviolence workshops for the Superintendent and the School Committee; provide Kingian Youth Leadership Training for high school students; host an anti-racism book club for employees; and consult with Savastano and Masiello on an ad hoc basis. *See. Id.*

J. Authority over the BIPOC Board

The School Committee did not regard the Advisory Board as an entity over which it had control; therefore, it did not believe that it could dictate the membership of the BIPOC Board or how NSRI facilitated the meetings. *See. Exhibit A*, Macinanti Dep. at 92:14-20; *See also. See. Exhibit I*, Savastano Dep. at 33:14-20; *See also. Exhibit H*, Markey Dep. at 55:25-56:3. The School Committee did not request that Wildman provide it with copies of the BIPOC Board's

meeting minutes, nor did they expect her to forward the copies to them. *See. Exhibit I*, Savastano Dep. at 26:22-27:3. Rather, Wildman forwarded the meeting minutes to the Superintendent and the School Committee because she thought it was a nice gesture and a way to let them know that the BIPOC Board had a meeting, and to “let them know that things were moving forward, that people had come, and [they] were starting to have some conversations.” *See. Exhibit C*, Wildman Dep. at 38:2-18. Likewise, Wildman forwarded a copy of an Anti-Racism/Anti-Discrimination Policy draft that she purported was drafted by the Advisory Board to the School Committee “as a courtesy.” *See Id.* at 68:12-69:6.

School Committee members did not involve themselves with the BIPOC Board and did not read the minutes that Wildman forwarded to them. *See. Exhibit A*, Macinanti Dep. at 20:9-18; *See also. Exhibit H*, Markey Dep. at 55:25-56:7.

The School Committee was interested in learning how its policies impacted BIPOC community members, so it added two (2) seats to the Policy Subcommittee and designated them for use by the BIPOC Board so that the BIPOC Board could provide its perspective as to the impact of School Committee Policies on individuals who identify as BIPOC. *See. Exhibit A*, Macinanti Dep. at 15:6-14; *See also. Exhibit F*, Gitahi Dep. at 37:19-39:14.⁵ Initially, Gitahi was the only individual from the BIPOC Board who was on the Policy Subcommittee because when the BIPOC Board discussed having a member participate on the Policy Subcommittee, Gitahi was the only individual who felt comfortable volunteering for the position. *See. Exhibit F*, Gitahi Dep. at 40:2- 41:15.

⁵ The School Committee later voted to allow a third member of the BIPOC Board occupy a seat on the Policy Subcommittee, which, was not uncommon because the School Committee often votes to expand or add members its subcommittees depending on if someone departs; they do not necessarily specify an individual to occupy the seat. *See. Exhibit A*, Macinanti Dep. 55:15-19; 56:19-25.

K. The Policy Subcommittee

The Policy Subcommittee is a subset of the School Committee that was established pursuant to the School Committee's Bylaws. A copy of the School Committee's Bylaws is attached hereto as "***Exhibit K.***" While the BIPOC Board provided advice to the Policy Subcommittee through their personal perspectives, the Policy Subcommittee, in coordination with the District's legal counsel, reviews and drafts policies based on public policy and laws and regulations for consideration of the School Committee. *See. Exhibit A*, Macinanti Dep. at 35:5-36:8; 36:25-37:6. All subcommittees of the School Committee, including the Policy Subcommittee, have between one and three (3) Committee members who sit on them. *See. Id.* at 32:25-33:9. *See also. Exhibit K; See also. Exhibit I*, Savastano Dep. at 37:19-38:4. The Chair of the School Committee appoints the members of the Committee to each subcommittee, and "community members serving on sub-committees shall be appointed by the Committee on the recommendation of the Chair." *See. Exhibit K.* According to the Bylaws, subcommittees are required to post and conduct meetings in accordance with the Open Meetings Law, and while they are charged by the full Committee for a specific purpose such as fact-finding, studying issues, and/or making recommendations to the full School Committee, they do not make decisions for the District. *See Id.; See also. Exhibit A*, Macinanti Dep. at 32:24-33:9. The School Committee members who sit on a particular subcommittee are responsible for bringing the recommendations of that subcommittee to the full School Committee for consideration and decision. *See Id.* at 44:2-13. Moreover, as explained by Macinanti:

The policy subcommittee reviews [the School Committee's] district policies and/or they have – they can make a recommendation to create a new policy, and they work with [the School Committee's] legal team to put that together. And they make a recommendation to the full body, the full school committee body. And then the full committee body then does its own procedural [*sic*] and determines whether they will adopt it or not. *See Id.* at 35:25-36:8.

Pursuant to the Bylaws, all policy development requires an analysis that includes, among other things, “information and input from multiple sources within the school district and community-at-large,” and “public comment shall be invited on all new policy and policy amendments via oral, written and electronic formats.” *See. Exhibit K*. In order for a new policy or policy amendment to be adopted, it must be considered at two (2) separate meetings before adoption; official School Committee action may be taken at the second meeting. *See Id.*

The Policy Subcommittee meetings were always well attended and it “often had lively discussion.” *See. Exhibit I*, Savastano Dep. at 52:1-7. People would go to the Policy Subcommittee meetings and the policies would “be torn up by the group sitting at the table,” because that was the job of the members on the Policy Subcommittee. *See Id.* at 59:5-11. There were three (3) members of the School Committee on the Policy Subcommittee. Savastano, who was a member of the Policy Subcommittee testified:

We would have three members of the school committee on there and different policies would come forward and be discussed and then go forward to the school committee for discussion and then go back to the policy subcommittee for more discussion and then go back to the school committee for more discussion and then back to the policy subcommittee. *See Id.* at 52:17-23.

The Policy Subcommittee would present its findings by placing a policy on the School Committee’s meeting agenda, and while the discussion at the School Committee meeting would ultimately be led by one of the members who was also on the Policy Subcommittee, other individuals may also participate in the presentation, for example, a principal may participate in a discussion regarding a graduation policy. *See Id.* at 53:12-54:4. All of the Policy Subcommittee meetings are open to the public, livestreamed and recorded for later viewing. *See Id.* at 59:3-5. Therefore, members of the public had the opportunity to provide their thoughts and input

regarding any and all policies at both Policy Subcommittee meetings and full School Committee meetings. *See Id.* at 109:18-21.

Moreover, it is not uncommon for various stakeholders, including community groups, individuals, and businesses to reach out to the School Committee with their concerns, ideas and recommendations regarding School Committee policies. *See. Exhibit H*, Markey Dep. at 46:16-47:10; *See also. Exhibit A*, Macinanti Dep. at 50:6-16. The BIPOC Board provided research to the Policy Subcommittee in the form of gathering input from community members, which is a source of information and community perspective that neither the Policy Subcommittee nor the School Committee could get from any other source. *See. Exhibit F*, Gitahi Dep. at 43:13-17; 44:16-45:6.

L. The Anti-Racism, Anti-Discrimination and Anti-Harassment Policy

With respect to the Anti-Racism, Anti-Discrimination and Anti-Harassment Policy (hereinafter the “Anti-Racism Policy”), the extent to which the BIPOC Board “created” an Anti-Racist Policy for the Policy Subcommittee’s review is in dispute. Wildman testified that the BIPOC Board drafted an Anti-Racism Policy for the District *See. Exhibit C*, Wildman Dep. at 57:3-5. Gitahi testified that the BIPOC Board did not create new policies; but rather, their goal was to “see how [they] could adjust existing policies.” *See. Exhibit F*, Gitahi Dep. at 26:11-16. Gitahi stated:

We weren’t writing the policy. We were – again, we were – we were coming up with suggestions for the current policy. And so I think when – I believe when [Wildman] says that we were writing the policy, we’re not writing it from scratch. We were reviewing the policy and we were making suggestions. And I think that’s just, like, a general way of saying that. But we weren’t – we weren’t creating --- we weren’t creating – at this point, we weren’t creating a – a brand new policy. *See Id.* at 51:5-14.

Gitahi also testified as follows:

- Q. Was part of making those suggestions drafting portions or making revisions to the antiracism/anti-discrimination policies that already existed in the district?
- A. Yeah, revisions and suggestions, yes.
- Q. And did that include members of the BIPOC Advisory Board actually writing and drafting revisions to those policies?
- A. No. No. The writing was done in subcommittee. The BIPOC Advisory Board would offer suggestions and then – and then the – the representatives of the BIPOC Advisory Board to the subcommittee would then incorporate those suggestions into comments in the document itself and then that would go before the subcommittee for consideration. *See Id.* at 52:2-16.

Further, Gitahi explained that the Policy Subcommittee created a new “umbrella policy” which became the Anti-Racism Policy, and that there were not specific members of the Policy Subcommittee that drafted it; but rather, it was a group effort. *See Id.* at 26:16-28:14.

Regardless of the extent to which the BIPOC Board was involved in the “creation” of the Anti-Racism Policy, the draft Policy was revised by the Policy Subcommittee multiple times and the version that was presented to the School Committee for second reading and ultimately adopted by the full Committee omitted all references to any so-called official or advisory power of the BIPOC Board. *See. Exhibit A*, Macinanti Dep. at 75:20-76:12; 78:2- 79:1. These references to the BIPOC Board were removed because it is the District’s policy not to identify specific organizations in policies because organizations change over time. *See Id.*

Specifically, the Policy Subcommittee discussed a draft of the Anti-Racism Policy at its January 7, 2021 meeting, and the Subcommittee decided that more research and revisions were required. A copy of the January 7, 2021 Meeting Minutes is attached hereto as “***Exhibit L.***” Subsequently, the draft Anti-Racism Policy was reviewed and tabled due to additional revisions being needed at Policy Subcommittee meetings occurring on the following dates: February 25,

2021; March 4, 2021; and March 18, 2021. Copies of the respective minutes for these meetings are collectively attached hereto and incorporated herein as “***Exhibit M.***” It was not until the April 15, 2021 Policy Subcommittee meeting that the Subcommittee voted to send the Anti-Racism Policy to the full Committee for a first reading. A copy of the April 15, 2021 Meeting Minutes is attached hereto as “***Exhibit N.***”

The Anti-Racism Policy was read for the first time at the May 20, 2021 School Committee meeting and was referred back to the Policy subcommittee. A copy of the May 20, 2021 Meeting Minutes is attached hereto as “***Exhibit O.***” *See also. Exhibit A*, Macinanti Dep. at 77:21-78:18. Thereafter, the Policy Subcommittee further revised the draft Anti-Racism Policy and voted to send the Policy back to the full Committee for a second reading, which came before the School Committee at its November 23, 2021 meeting. A copy of the November 23, 2021 Meeting Minutes is attached hereto as “***Exhibit P.***” The School Committee was not satisfied with the draft of the Anti-Racism Policy and sent it back to the Policy Subcommittee once again. *See Id.* The Policy Subcommittee made additional revisions to the Policy, including removing all references to the BIPOC Board set forth therein, and sent it back to the full Committee, which approved the Anti- Racism Policy at its December 14, 2021 meeting. Copies of the November 29, 2021 the December 14, 2021 Meeting Minutes of the Policy Subcommittee, along with the red-lined version of the Anti-Racism Policy as it was approved by the Committee are attached hereto as “***Exhibit Q.***”

M. Curriculum

The BIPOC Board never recommended specific curricula to the District, nor did it write or rewrite curriculum for the District. *See. Exhibit C*, Wildman Dep. at 52:1-53:24; 118:25-119:3; *See also. Exhibit H*, Markey Dep. at 66:8-24; 111:24-112:12; *See also. Exhibit I*,

Savastano Dep. at 18:23-19:20. Masiello was the District's Director of Curriculum, and while she invited the public, not just the BIPOC Board to review curriculum materials, it was in her purview to write curriculum. *See. Exhibit C*, Wildman Dep. at 52:1-9; 83:20-23. During a Policy Subcommittee meeting, it was represented that the BIPOC Board suggested that the District include curricula that "had more of a historical context" or that spoke more about the history of specific to Indigenous people of South Kingstown and/or the State of Rhode Island. *See. Exhibit F*, Gitahi Dep. at 35:7-36:19. As explained by Savastano:

If I can explain it this way, just that curriculum in Rhode Island is determined by the State. We have lists of curriculum materials that we must select from. So there is no one that is going to tell us in schools what we have to teach. We have to pick from a preapproved list.

A group can share how – what their feelings are about that curriculum – in this case the BIPOC group. But it doesn't mean that we would even have the ability to change the curriculum because the State determines the list of curriculum that we can use. *See. Exhibit I*, Savastano Dep. at 19:10-20.

When asked if it was her understanding that one of the functions of the BIPOC Board was to provide recommendations regarding curriculum to the School Committee, Savastano replied:

My – when I say that, it's in terms of how they feel about certain aspects of curriculum. But again, there's not much authority in Rhode Island around curriculum selection or recommendation. *See Id.* at 19:22-20:5.

Therefore, any member of the public or community group was invited to review curricula, and while they could offer their thoughts and feelings regarding curricula, the Director of Curriculum bore the responsibility of ensuring that the District offered curricula that was within the specific parameters set forth by the State.

N. The Suspension Policy

Providing recommendations to school officials was not one of the purposes of the BIPOC Board. *See. Exhibit C*, Wildman Dep. at 64:25-65:16. Rather, the Suspension Policy was being

discussed at the Policy Subcommittee meeting, and after learning of this, the BIPOC Board started to look at it to see if there were any suggestions that they could make. *See. Exhibit F*, Gitahi Dep. at 25:5-15. Dr. Chip McGair, the High School Principal, presented a first draft of the Suspension Policy at the October 8, 2020 Policy Subcommittee, at which time he stated that he would take the feedback from the meeting back to the “Suspension Team” and also forward it to legal counsel for review. A copy of the October 8, 2020 meeting minutes is attached hereto as **“Exhibit R.”** At the October 22, 2020 Policy Subcommittee, a revised draft Suspension Policy is reviewed and the District’s legal counsel makes several recommendations to the draft before being sent back to the School Committee. A copy of the October 22, 2020 Meeting Minutes is attached hereto as **“Exhibit S.”**

The Suspension Policy went before the School Committee for a second reading at its October 27, 2020 meeting and was approved. A copy of the October 27, 2020 meeting minutes is attached hereto as **Exhibit T.** At this meeting, it was represented to the School Committee that the BIPOC Board wanted “requested involvement in further discussion” regarding the Suspension Policy; however, School Committee members expressed a desire to pass the Policy that night, which they did. *See Id.* The Suspension Policy has not been amended since the October 27, 2020 meeting. *See. Id.*

O. The Hiring Policy

A first draft of the Appointments and Promotions Policy (the “Hiring Policy”) was presented to the Policy Subcommittee by the District’s legal counsel at its February 4, 2021 meeting. A copy of the February 4, 2021 meeting minutes is attached hereto as **“Exhibit U.”** During the May 13, 2021 meeting of the Policy Subcommittee, members of the BIPOC Board made suggestions to the Policy, such as adding a requirement that the Hiring Committee be

composed of at least forty (40%) BIPOC individuals. A copy of the May 13, 2021 meeting minutes is attached hereto as “*Exhibit V.*” A draft of the Hiring Policy was brought before the School Committee during its May 20, 2021 meeting, but was sent to legal counsel for further review. *See Exhibit O.* A copy of the draft Hiring Policy presented thereat are collectively attached hereto as “*Exhibit W.*” The first reading of the Hiring Policy was approved at the June 14, 2022 School Committee Meeting and the Policy that is currently in effect was approved at the August 23, 2022 School Committee Meeting. Copies of the June 14, 2022 and August 23, 2022 Meeting Minutes, together with a copy of the current Hiring Policy are collectively attached hereto as “*Exhibit X.*”; *See also. Exhibit A*, Macinanti Dep. at 87:19-90:2. The School Committee did not adopt the changes to the Hiring Policy that were recommended by the BIPOC Board. *See. Exhibits W and X; See also. Exhibit C*, Wildman Dep. at 104:9-105:2; *See also. Exhibit A*, Macinanti Dep. at 87:19-90:2.

P. Legal Counsel

With respect to policy-making, it is the responsibility of the District’s legal counsel to coordinate with the Policy Subcommittee to ensure that the policies presented to the School Committee are in accordance with the applicable laws and regulations. *See. Exhibit A*, Macinanti Dep. at 35:5-36:8; 36:25-37:6. The District’s legal counsel did not provide legal advice to the BIPOC Board, the BIPOC Board did not retain the District’s legal counsel as their own, and the BIPOC Board did not seek legal advice from the District’s legal counsel. *See Exhibit F*, Gitahi Dep. at 83:11-13; 102:14-103:1. There was no indication that legal counsel “might have been under the impression” that the BIPOC Board was seeking legal advice from her. *See Id.* at 103:24-104:2. The BIPOC Board acknowledged that the District Legal Counsel represented the

District, not the BIPOC Board, and thus the responsibility of the District's legal counsel was to ensure that the District had "strong" policies. *See Id.* at 103:12-104:2.

Q. Dissolution of the BIPOC Board

NSRI stopped facilitating BIPOC Board meetings prior to September of 2021, and around that time, the composition of the BIPOC Board changed as did the name of the Board. *See Exhibit C*, Wildman Dep. at 87:25-89:3.

R. Attorney General's Decision

On or about May 20, 2021, Solas filed a complaint with the Office of the Attorney General (the "Attorney General") alleging that the BIPOC Board was a public body pursuant to R.I. Gen. Laws § 42-46-2(5); however, after considering the arguments set forth by Solas and the School Committee, in a decision dated May 10, 2022, the Attorney General determined that the BIPOC Board was not a public body, and thus the School Committee did not violate R.I.G.L. § 42-46-1, *et seq.*, (the "Open Meetings Act"). Copies of the documents submitted to the Attorney General by the Parties, along with the May 10, 2022 decision are attached hereto and collectively incorporated herein as "***Exhibit Y.***"

II. LEGAL STANDARD

Pursuant to R.I. Super. R. Civ. P. 56, a hearing justice should grant a party's motion for summary judgment "if there exists no genuine issue of material fact and the moving party is entitled to judgment as a matter of law." *Lynch v. Spirit Rent-A-Car, Inc.*, 965 A.2d 417, 424 (R.I. 2009). "The judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." (Super. R. Civ. P. 56(c)). Further, "in opposing a motion for summary

judgment, the nonmoving party carries the burden of proving by competent evidence the existence of a disputed issue of material fact and ‘cannot rest on allegations or denials in the pleadings or on conclusions or legal opinions.’” *Classic Entertainment & Sports, Inc. v. Pemberton*, 988 A.2d 847, 849 (R.I. 2009) (quoting *Accent Store Design, Inc. v. Marathon House, Inc.*, 674 A.2d 1123, 1225 (R.I. 1996)).

Additionally, “the purpose of the summary-judgment procedure is to identify disputed issues of fact necessitating trial, not to resolve such issues.” *Manning v. New England Power*, No. Civ. A. PC98-9051, 2004 WL 3190204, at *1 (R.I. Super. December 22, 2004)(citing *Rotelli v. Catanzaro*, 686 A.2d 91, 93 (R.I. 1996)).

However, when both of the adversary parties file for summary judgment, the court “shall treat the relevant allegations of both parties in the most favorable light insofar as they oppose the respective motions.” *Manning*, 2004 WL 3190204 at *1, citing *RIH Medical Found., Inc. v. Nolan*, 723 A.2d 1123, 1125 (R.I. 1999). When both parties move for summary judgment and no genuine issue of material fact exists, the court must review the record to determine if either party is entitled to judgment as a matter of law. *Id.* citing *Dubis v. East Greenwich Fire District*, 754 A.2d 98, 100 (R.I. 2000).

III. LEGAL ARGUMENT

As stated by the Supreme Court in *Fischer v. Zoning Board of the Town of Charlestown*, in order for the Open Meetings Act to apply to an entity, a “public body” must convene and there must be a “quorum” of the members present. 723 A.2d 294, 295 (R.I. 1999). If neither of these prerequisites are present, the Open Meetings Act does not apply and the inquiry ends. If an entity is deemed to be a “public body” in accordance with the Open Meetings Act, then the Court must find that the public body had a quorum of its members at a meeting where they discussed

matters over which the public body has “supervision, control, jurisdiction, or advisory power.”

R.I.G.L. § 42-46-2(1). As demonstrated herein, in consideration of the most recent and controlling case precedent and the instructive decisions of the Attorney General, the BIPOC Board was not a public body within the meaning set forth in the Open Meetings Act.

A. The undisputed facts in the instant matter are analogous to those set forth in Pontarelli v. Rhode Island Board Council on Elementary and Secondary Education,⁶ and consistent with the Supreme Court’s holding therein, the BIPOC Board is not a public body subject to the Open Meetings Act.

Pursuant to R.I.G.L. § 42-46-2(5), a public body is defined as “any department, agency, commission, committee, board, council, bureau, or authority, or any subdivision thereof, of state or municipal government,” and also includes “the board of directors of any library that funded at least twenty-five percent (25%) of its operational budget in the prior budget year with public funds,” and all authorities defined in R.I.G.L. § 42-35-1, the Administrative Procedures Act.

In *Pontarelli*, the most recent and controlling Supreme Court decision regarding the applicability of the Open Meetings Act’s definition of “public body” to an entity or organization, the Court held that the Rhode Island Department of Education’s (“RIDE”) Compensation Review Committee (“CRC”) was not a “public body” within the definition set forth in the Act. 151 A.3d at 301. Therein, the Board Council on Elementary and Secondary Education (the “Council”), created the CRC to convene and review requested and proposed salary adjustments for RIDE employees. *Id.* at 302-303. The CRC was composed of six (6) RIDE employees: three (3) division chiefs, the Chief of Staff, the Human Resources Coordinator, and the Deputy Commissioner. *Id.* at 303. The Deputy Commissioner served as the Chair of the CRC and membership was not by appointment, but rather, it was considered an additional task for “people

⁶ 151 A.3d 301 (R.I. 2016).

that are on the leadership team.” *Id.* The CRC was described as an “informal, *ad hoc* working group with a strictly advisory role and no legal status or authority. *Id.* While the CRC created a charter, it did not have regular meetings, post public notices, or keep written minutes. *Id.* Additionally, “the CRC began reviewing the creation of new positions in RIDE and the work of each division or office should oversee. Because only the commissioner has the actual authority to take personnel actions, the CRC is ‘strictly advisory’ and handles all personnel matters outside the scope of the human resources department. *Id.*

In support of its decision, the Court stated that the CRC was not created by an executive order, did not meet on a regular basis, and it “acted as an informal strictly advisory committee.” *Id.* at 308. (Underlining added for emphasis). Further, the Court explained that even though the Compensation Review Committee “was composed of a group of high-level state officials and operated under a charter,” these two (2) factors alone were insufficient to “place them into the ‘public policy’ umbrella.” *Id.* The Court also emphasized the fact that the Compensation Review Committee’s sole function was to advise the Commissioner of RIDE, who in turn had to make a recommendation to the Council explaining that if the Commissioner decided to present any proposal to the Council for its approval, the public who have an opportunity to be informed of and object to such a proposal. *Id.*

Here, the School Committee voted to allow representatives of NSRI, a private, non-profit organization, to “create an equity and anti-racist advisory board.” *See*. Section I(C) *supra*. NSRI was charged with setting up the structure and determining the membership and membership qualifications of the BIPOC Board. *See Id.*; *See also*. Section I(H) *supra*. The members of the School Committee had no role in selecting the members of the BIPOC Board. *See*. Section I(D) *supra*. NSRI facilitated the BIPOC Board, which included recruiting members,

planning agendas, setting dates for meetings, and securing meeting places. *See. Id.* Unlike in *Pontarelli*, there were no School Committee members, administrators or “high-level” school officials on the BIPOC Board; but rather, it was composed of volunteers from the community. *See. Section I(F) supra.* The Superintendent and Director of Curriculum attended one meeting at which they were observers and did not participate. *See Id.* In fact, the BIPOC Board did not have a set membership; sometimes they would have upwards of two (2) dozen attendees, and other times only five (5) or six (6) “core” members who showed up. *See Id.*

The function of the BIPOC Board was to talk about the experiences people of color had in the South Kingstown School District and to make suggestions as to how the District could “improve things for all students, including the BIPOC students and parents and families.” *See. Section I(C) supra.; See also. Section I(E) supra.* The BIPOC Board did not have a charter; it was informal. The BIPOC Board did not interact in an official capacity, have specific agendas, vote on matters or pass any resolutions. *See. Section (I)(G) supra.* The School Committee did not believe that it had control over the BIPOC Board, and while Wildman forwarded meeting minutes and a draft policy to them as a convenience, they did not expect her to do so, and at least some of the School Committee members stated that they did not even read what was forwarded to them. *See. Section I(J) supra.*

Not only did the School Committee not appoint members to the BIPOC Board, similarly, it did not appoint specific members of the BIPOC Board to the Policy Subcommittee. Rather, two (2), and later three (3) seats on the Policy Subcommittee were reserved for BIPOC Board members, if they chose to attend. *See Id.* The BIPOC Board members would bring suggestions to the Policy Subcommittee, which were discussed and analyzed along with all of the other comments and suggestions of the various Policy Subcommittee members. Just as the CRC in

Pontarelli only had strictly advisory authority because the Commissioner had the authority to make personnel decisions, likewise, the BIPOC Board was strictly advisory in that it is the School Committee that has the authority to make decisions regarding policies.

Pursuant to R.I.G.L. § 16-2-9(a), the specifically enumerated powers and duties of the School Committee include, but are not limited to: developing education policies to meet the needs of the community; providing for and ensuring “the implementation of federal and state laws, the regulations of the council on elementary and secondary education, and local school policies, programs and directives; having overall policy responsibility for the employment and discipline of school department personnel; adopting personnel policies; and establishing policies governing curriculum, courses of instruction, and textbooks.

The Policy Subcommittee also does not have authority to adopt policies for the District. The Policy Subcommittee must forward all draft policies to the School Committee, and each policy must be considered at two (2) School Committee meetings before it is adopted by the School Committee. *See* Section I(K) *supra*. Both the Policy Subcommittee meetings and the full School Committee meetings are open to the public, and therefore, all policies are subject to public scrutiny at at least three (3) public meetings. *See Id.*

Moreover, the extremely limited advisory power of the BIPOC Board is demonstrated by the fact that the policies that included input from the BIPOC Board were often sent back to the Policy Subcommittee by the School Committee and/or adopted by the School Committee without the BIPOC Board’s suggested changes. For example, the School Committee was not satisfied with the Anti-Racism Policy as evidenced by the fact that it sent the Policy back to the Policy Subcommittee multiple times, and ultimately adopted the Policy only after all of the references

to the BIPOC Board were stricken. *See* Section (I)(L) *supra*. Likewise, the Hiring Policy was sent back to the Policy Subcommittee by the School Committee, and the School Committee ultimately adopted a version of the Hiring Policy that omitted the BIPOC Board's suggestions. *See* Section I(O) *supra*. Additionally, the School Committee effectively denied the BIPOC Board's request to have further discussion regarding the Suspension Policy and adopted it the same night the request was presented to it. *See* Section I(N) *supra*.

In consideration of the foregoing, it is clear that when applying the Court's analysis in *Pontarelli* to the instant matter, the balance of the facts falls heavily on the finding that the BIPOC Board is not a public body. Arguably, the undisputed facts demonstrate that it is even less likely that the BIPOC Board is a public body when compared to the CRC described in *Pontarelli*.

B. The factors relied upon by the Court in Solas v. Emergency Hiring Council of the State of Rhode Island⁷ when finding the existence of a public body simply are not present in this case.

In *Solas v. Emergency Hiring Council of the State of Rhode Island*, a case that has been distinguished by *Pontarelli*, the Supreme Court determined that an Emergency Hiring Council (the "EHC"), which was created by an executive order to manage and control the State's hiring practices and fiscal resources, was a "public body" within the definition set forth in the Open Meetings Act. 774 A.2d at 823. Pursuant to the executive order, "no new positions, vacant positions, or promotions could be created or filled without authorization from the EHC. *Id.* A second executive order expanded the EDC's duties to make suggestions to the Governor related to "reforms to the State personnel system." *Id.* at 824. Moreover, the Governor specifically stated that the intent of the executive order was to insure that "no person or persons other than

⁷ 774 A.2d 820 (R.I. 2001).

the Council shall have the authority to make any determinations in this regard.” *Id.* With respect to composition of the EHC, the Director of the Department of Administration or designee, a Department Director appointed by the Governor, the Governor’s executive counsel or designee, the Governor’s cabinet secretary, and the Special Assistant to the Chief of Staff for Boards and Commissioners were all members of the EHC. *Id.* In consideration of these factors, the Court stated:

The record demonstrates that the EHC combines senior executive branch staff members with employees for assistance with the functions and objectives set forth in both executive orders to determine whether creating a new position in state government or filling a vacancy is absolutely necessary. Upon a reading of both executive orders, it is clear that the council has been granted significant influence and veto power over creating positions in state government, promoting employees to existing positions and filling existing vacancies. Thus, at the very least, the EHC functions in an influential advisory capacity with veto power over a subject of significant public interest. *Id.*

While the Court also rationalized that “whether supervisory or advisory, both functions are regulated by the act,” as stated above, controlling case law specifically requires that any advisory power must be “*strictly* advisory.” *Id.* at 825.

Unlike the EHC in *Solas*, here, there is no indicia of supervisory authority or veto power bestowed upon the BIPOC Board. While the EHC had “significant influence and veto power over creating positions in state government, promoting employees to existing positions and filling existing vacancies, the BIPOC Board had no independent authority. The record is replete with references to the fact that the BIPOC Board made informal suggestions (without taking votes), as opposed to any type of formal recommendations to the Policy Subcommittee; and any such suggestions did not even make it out of the Policy Subcommittee unless the Subcommittee voted to incorporate them into a draft policy and send it to the full School Committee. Moreover, neither the BIPOC Board nor the Policy Subcommittee had any veto power. The School

Committee is vested with the power to make decisions regarding policies and curriculum, and it routinely sent policies back to the Policy Subcommittee for further review and revisions. The BIPOC Board was comprised of volunteer parents, students and community members who had no decision-making authority on behalf of the District. Once again, any so-called advisory power of the BIPOC Board was certainly *de minimis* as evidenced by the fact that many of the suggestions they made were omitted from the District's policies.

C. The findings of the Attorney General in this and comparable matters are entitled deference, or in the very least, are instructive and should not be wholly disregarded.

In *Fischer v. Zoning Board for the Town of Charlestown*, this Honorable Court recognized that this Court gives great deference to the Attorney General in these matters as he is the public official entrusted, in the first instance, to investigate and determine the validity of a complaint made under the Open Meetings Act (42-46-8 of the Rhode Island General Laws, as amended).” No. Civ. A. WC-93-0624, 1997 WL 849921 at * 1 (R.I. Super. May 22, 1997) *aff’d* on other grounds, 723 A.2d 294 (R.I. 1999). With regard to the instant matter, the Attorney General noted that *Pontarelli* demonstrates that an entity that has an advisory role is not necessarily a public body,” and after balancing the facts and considering the tenet set forth in *Pontarelli*, the Attorney General correctly determined that the BIPOC Board does not meet the definition of a “public body” for Open Meetings Act purposes. *See. Exhibit Y.*

Therein, the Attorney General explained that while NSRI receives compensation for facilitating the BIPOC Board, the Board is comprised of volunteers who do not receive pay or benefits related to their membership. *See Id. citing Schmidt v. Ashaway Volunteer Fire Association*, AG Op. OM 98-33 (finding entity to not be a public body and noting that members

do not receive a salary or benefits for their services). Additionally, the Attorney General aptly stated:

The BIPOC Committee's mission as described by the School Committee, ie. to 'advocate for equity in the education of students who identify as Black, Indigenous, and People of Color (BIPOC) in South Kingstown schools, inspiring a healthier and just community and school system for everyone,' is also more focused on promoting general advocacy than carrying out any particular role or authority that has been designated to it. *See. Id.*

Also, the Attorney General acknowledged that the Policy Subcommittee has the authority to discuss and decide the proposed revisions that will eventually be submitted to the School Committee for final approval, and therefore, the Policy Subcommittee has no obligation to consider the BIPOC Board's suggestions at all. *See Id.* Importantly, the Attorney General noted that even assuming *arguendo* that the BIPOC Board was a public body, it would be difficult to determine whether a quorum existed at any given time and whether a "meeting" actually took place because there was no set membership or number of members. *See Id.* As demonstrated herein, the further development of the record has served to bolster the findings made in the Attorney General's decision in favor of the BIPOC Board not being a public body.

Additionally, the Attorney General has rendered a plethora of decisions concerning the "public body" requirement of the Open Meetings Act which are instructive when opining over the current matter. In *Montiero v. Providence School Board Nominating Commission*, the Attorney General determined that the Providence School Board Nominating Commission was not a public body within the meaning set forth in the Open Meetings Act because the Nominating Commission was formed after the mayor adopted one of the recommendations from a non-profit, non-government group studying the Providence Public Schools, and each of the five (5) members of the Commission were selected by one of the non-profit sponsoring organizations that were not subject to a governmental or approval process. OM 02-25 (R.I.A.G. December 13,

2002). Therein, the Attorney General also noted that there were no public dollars expended on the Nominating Commission, such as rent, secretarial, postage, stationary, salaries or other benefits. Likewise, here, the members of the BIPOC Board were selected by NSRI, a non-profit organization that was not subject to a governmental process, and while the School Committee paid NSRI a nominal fee for facilitating the BIPOC Board, there were no direct expenditures such as rent, administrative assistance, salaries, or benefits associated with the BIPOC Board.

Also, in *Nicole Solas v. RIDE's Educators of Color Committee*, the Attorney General determined that based upon the totality of undisputed facts presented, RIDE's Educators of Color Committee was not a public body under the Open Meetings Act. OM 22-45 2022 WL 3581438 (R.I.A.G. July 27, 2022). The Educators of Color Committee, did not have a set membership; rather, it was open to all "Rhode Island teachers, administrators, school leaders, social workers, and any other persons working in the education field," and the Commissioner "informally convened educators and education staff of color 'for a series of ongoing conversations' 'to offer clear guidance and create policies and procedures to promote empowerment and the retention of current and future educators of color.'" *Id.* Additionally, it did not have any decision-making authority; rather the members of the group engaged in roundtable discussions and if the Committee made any recommendations to the Commissioner, they would be subject to public scrutiny through public meetings because the Commissioner would have to present the recommendations to the Council at a public meeting. *Id.* The Attorney General determined that the totality of the facts demonstrated that the Committee lacked any specific authority to take any government action and therefore, in keeping with *Pontarelli*, was not a public body. *Id.* (*See also. Nicole Solas v. RIDE's LEAP Task Force*, OM 22-26, 2022 WL 2168832 (R.I.A.G. May 11, 2022) wherein the Attorney General determined that RIDE's Learning and Equity

Accelerated Pathways (LEAP) Task Force was not a public body because it was created by the Commissioner but not pursuant to any formal statutory or legal authority and the key function was to compile information and make suggestions in the form of a report to the Commissioner, who in turn made recommendations to the Council during public meetings and under public scrutiny.) (*See also. In Re: East Greenwich School Committee*, ADV OM 23-03, 2023 WL 4678970 (R.I.A.G. June 26, 2023) wherein the Attorney General held that a Local Special Education Advisory Committee is not a public body, in part, because the Committee was not required to conduct regular meetings, but rather must hold at least four (4) meetings per year.)

D. Plaintiff's insinuation that correspondence between the District's legal counsel and the BIPOC Board related to the latter's suggestions regarding policies before the Policy Subcommittee created an attorney-client relationship is expressly contradicted by the record and lacks support from relevant case law.

Plaintiff attempts to argue that some sort of attorney-client relationship was created between District's legal counsel and the BIPOC Board and therefore, such a relationship equates to a finding that the BIPOC Board is a public body. Simply stated, Plaintiff has offered no legal support for this argument in the terms of a case, statute, regulation or Attorney General opinion. Rather, Plaintiff relies on the Court's decision in *DiLuglio v. Providence Auto Body, Inc.*, concerning the relationship between a lawyer and a non-lawyer with respect to the dissolution of a private business for the proposition that an attorney-client relationship existed between the District's legal counsel and the BIPOC Board. 755 A.2d 757 (R.I. 2000). Plaintiff's reliance on *DiLuglio* is misplaced.

In *DiLuglio*, the Court explained that the existence of an attorney-client relationship is a question of fact, and the burden rests with the individual asserting the existence of the relationship. *DiLuglio*, 755 A.2d at 766. (internal citations omitted.) The Court further explained

that as a general proposition, the creation of a professional relationship between attorneys and their clients is governed by contract law; the attorney-client relationship arises “by reason of agreement between the parties.” *Id.* (internal citations omitted.) While the Court indicates that such a relationship may be implied based on the conduct of the parties, the Court qualifies this statement by explaining: “[a]nd where the advice and assistance of the attorney are sought and received in matters pertinent to the attorney’s profession as a lawyer, such a relationship can still arise even in the absence of an express agreement.” *Id.* (internal citations omitted.)

Here, there was no express or implied agreement such that the District’s legal counsel had any type of professional attorney-client relationship with the BIPOC Board. In fact, testimony contained in the record expressly disclaims this assertion. The District’s legal counsel attends Policy Subcommittee meetings to assist the Subcommittee in drafting policies that are in compliance with federal and state laws and regulations and best practices. Gitahi attended Policy Subcommittee meetings as a BIPOC Board representative and the District’s legal counsel communicated with Gitahi on behalf of the District to ensure that everyone was “on the same page” with respect to which provisions should and should not be included in the policies to ensure that the District adopted legally sound policies.

The act of an attorney reaching out to a third party working group to clarify or confirm a mutual understanding does not create an attorney-client relationship. Rather it is due diligence on behalf of the District. Moreover, the record plainly reflects that the BIPOC Board did not seek legal counsel from, or otherwise retain legal representation from the District’s legal counsel; legal counsel did not provide legal advice to the BIPOC Board; and there was no indication that legal counsel “might have been under the impression” that the BIPOC Board was seeking legal advice from her. *See*. Section I(P) *supra*. The BIPOC Board acknowledged that the District’s

legal counsel represented the District, not the BIPOC Board, and as such, the District legal counsel's responsibility was to ensure that the District had "strong" policies. *See Id.*

E. Even if this Court found that the BIPOC Board was considered a "public body," it had no authority to adopt School Committee policies and thus Plaintiff's remedy requesting that the policies adopted by the School Committee be declared null and void is unreasonable.

As demonstrated by the record herein, the BIPOC Board had absolutely no decision-making authority with respect to District policies, curriculum or any other decisions related to the school system. The Anti-Racism, Hiring, and Suspension Policies were all discussed at length, during multiple public meetings held by both the Policy Subcommittee and the School Committee. Plaintiff was free to attend the Policy Subcommittee and advocate for changes to the draft policies and/or request that they not be forwarded to the full School Committee for review. Similarly, Plaintiff could have attended any of the School Committee meetings and likewise voiced her opinion and/or concerns regarding any of the policies at issue. The record is devoid of any evidence demonstrating how Plaintiff has been harmed by the adoption of the Policies; especially since there is no indication that she voiced her concerns for any of the policies at any of the public meetings. As such, there is no harm to the Plaintiff that would justify declaring any of the policies null and void. Also, the BIPOC Board was dissolved in or around September of 2021. Moreover, the Court should consider this lack of harm when considering any award of attorneys' fees as the Court "must consider the inherent tenets of justice and fairness in determining the amount, ensuring that the remedy is 'proportional to the breach and the effect thereof.'" *Tanner v. Town Council of Town of East Greenwich*, 880 A.2d 784, 800 (R.I. 2005) citing *Edwards v. State*, 677 A.2d 1347, 1349 (R.I. 1996).

IV. CONCLUSION

For the foregoing reasons, Defendant, South Kingstown School Committee, respectfully requests that this Honorable Court deny Plaintiff's Motion for Summary Judgment and grant the School Committee's Motion for Summary Judgment as the undisputed facts clearly demonstrate that the School Committee is entitled to judgment as a matter of law.

Respectfully submitted,

DEFENDANT,

SOUTH KINGSTOWN SCHOOL
COMMITTEE,

By Its Attorneys,

/s/ Deidre E. Carreno

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Dated: July 16, 2024

CERTIFICATION

I hereby certify that on this **16th day of July, 2024**, I served this document through the electronic filing system to the following:

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The document is available for viewing and/or downloading from the Rhode Island Judiciary's Electronic Filing System.

/s/ Deidre E. Carreno
