



State of New Jersey

DEPARTMENT OF EDUCATION

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TRENTON, NJ 08625-0500

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Governor

SHEILA Y. OLIVER  
Lt. Governor

ANGELICA ALLEN-McMILLAN, Ed.D.  
Acting Commissioner

**SCHOOL ETHICS COMMISSION**

May 25, 2021

**For Complainant**

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SUBJECT: ATIF NAZIR v. NITANG PATEL, PISCATAWAY BOARD OF  
EDUCATION, MIDDLESEX COUNTY, SCHOOL ETHICS  
COMMISSION DOCKET #C43-19

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Dear Parties:

Enclosed please find the Final Decision adopted by the School Ethics Commission at its meeting on May 25, 2021.

If you have any questions, or need additional information, please feel free to contact our office at [school.ethics@doe.nj.gov](mailto:school.ethics@doe.nj.gov).

Sincerely,

A handwritten signature in blue ink that reads "Kathryn A. Whalen".

Kathryn A. Whalen, Director  
School Ethics Commission

Enclosure

***Before the School Ethics Commission  
OAL Docket No.: EEC-12359-19  
SEC Docket No.: C43-19  
Final Decision***

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***Atif Nazir,  
Complainant***

v.

***Nitang Patel,  
Piscataway Township Board of Education, Middlesex County,  
Respondent***

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**I. Procedural History**

This matter arises from a Complaint that was filed on June 13, 2019, by Atif Nazir (Complainant), alleging that Nitang Patel (Respondent), a member of the Piscataway Township Board of Education (Board), violated the School Ethics Act (Act), *N.J.S.A. 18A:12-21 et seq.* More specifically, the Complaint alleged that Respondent violated *N.J.S.A. 18A:12-24.1(e)* and *N.J.S.A. 18A:12-24.1(g)* of the Code of Ethics for School Board Members (Code).

In summary, Complainant asserts that Respondent, together with a Councilman and a member of the Zoning Board, distributed a flyer (seemingly only to those believed to be of Indian descent) requesting that they vote for the candidates in the 2019 Democratic Primary election bracketed under the slogan, “Middlesex County Democratic Organization.” The flyer mentioned, among other things, that the persons named on the flyer support South Asian persons and culture; contained a page that was printed in “Gujarati;” and stated that Complainant, as the leader of “a radical group,” is challenging the “Piscataway Democrats” and trying “to take over our township government.” *See* Complaint, Exhibit A. Complainant asserts that Respondent signed the flyer, and the signature included his picture and his name, followed by the words “Board of Education.” According to Complainant, Respondent referenced his position on the Board, but did not indicate he was speaking as a private citizen and not as a Board member (and not on behalf of the Board). Complainant asserts that the language in the flyer “provoked immediate public condemnation,” and Respondent violated *N.J.S.A. 18A:12-24.1(e)* and *N.J.S.A. 18A:12-24.1(g)*.

At its meeting on August 27, 2019, and after considering the parties’ submissions, the School Ethics Commission (Commission) voted to find that the Complaint was not frivolous, and denied Respondent’s request for sanctions. The Commission also voted, pursuant to *N.J.A.C. 6A:28-10.8(a)*, to transmit the above-captioned matter to the Office of Administrative Law (OAL) for a plenary hearing, at which Complainant would carry the burden to prove the alleged violation of *N.J.S.A. 18A:12-24.1(e)* and *N.J.S.A. 18A:12-24.1(g)* of the Code within the

standards set forth in *N.J.A.C.* 6A:28-6.4. The parties were advised of the Commission’s decision in a letter decision dated August 28, 2019.

At the OAL, the above-captioned matter was assigned to the Honorable Joseph A. Ascione, Administrative Law Judge (ALJ Ascione). *Initial Decision* at 1. On January 8, 2020, Respondent “waived any appearance ... and requested and consented to a disposition on the papers.” *Id.* at 2. Thereafter, Complainant “sought leave to amend the Complaint to include” a violation of *N.J.S.A.* 18A:12-24.1(f), which Respondent did not oppose, and the application was granted. *Id.* Consequently, Complainant submitted an Amended Complaint dated February 20, 2020, but it did not appear in the OAL’s files “until April 2020.” *Id.* Respondent filed an Answer to the Amended Complaint on July 24, 2020. *Id.* A “Zoom hearing” was later held on November 30, 2020, and the record remained open until February 12, 2021, so that the parties could submit written summations. *Id.*

On March 11, 2021, ALJ Ascione issued an Initial Decision detailing his findings of fact and legal conclusions, and the Commission acknowledged receipt of same; therefore, the forty-five (45) day statutory period for the Commission to issue a Final Decision was April 26, 2021.<sup>1</sup> Prior to April 26, 2021, the Commission requested a forty-five (45) day extension of time to issue its final decision. Pursuant to *N.J.S.A.* 52:14B-10(c) and *N.J.A.C.* 1:1-18.8, and for good cause shown, the Commission was granted an extension until June 10, 2021.

On March 24, 2021, Complainant filed Exceptions to the Initial Decision. As of the Commission’s meeting on April 27, 2021, Respondent had not filed a response to Complainant’s Exceptions, or otherwise filed his own Exceptions to the Initial Decision.

At its meeting on April 27, 2021, the Commission considered the full record in this matter. Thereafter, and at its meeting on May 25, 2021, the Commission voted to adopt the “factual findings” numbered 1-3, and 5-9; to reject the “factual findings” numbered 4 and 10-11; to reject the legal conclusion that Complainant failed to prove, by a preponderance of the credible evidence, that Respondent violated *N.J.S.A.* 18A:12-24.1(e); to adopt the legal conclusion that Respondent violated *N.J.S.A.* 18A:12-24.1(f), but to modify the basis therefor; to reject the legal conclusion that Complainant failed to prove, by a preponderance of the credible evidence, that Respondent violated *N.J.S.A.* 18A:12-24.1(g); and to modify the recommended penalty of reprimand in favor of censure.

## **II. Initial Decision**

In the “Factual Discussion” section of the Initial Decision, ALJ Ascione initially notes that, “[t]he within matter involves the use of the word ‘radical’ in a political flyer distributed during the Piscataway Township Council election in 2019 by three individuals affiliated with the Democratic Party.” *Id.* at 3. Complainant argues that the word “radical” in the flyer connoted “inappropriate inflammatory, derogatory, references to a religious divisions [(sic)] between the Gujarati community and the Muslim community,” and that “the use of the word is a subliminal message for Islamophobic messaging.” *Id.* at 4. However, ALJ Ascione found that “[t]his

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<sup>1</sup> Forty-five (45) days after March 11, 2021, was, technically, Sunday, April 25, 2021.

tribunal cannot make that distinction on the evidence presented, even if the tribunal accepted the excluded evidentiary documentation which [C]omplainant had not properly authenticated.” *Id.*

ALJ Ascione also notes that Respondent does not dispute the contents of the flyer (e.g., “Nitang Patel, Board of Education”), does not dispute his signature appears on the flyer, does not dispute that he consented to the distribution of the flyer, and does not dispute his actions violated “a portion” of the Act, but maintains his violation was “inadvertent.” *Id.* at 4-5.

As for the testimony of Complainant and his witnesses, they collectively testified that the language on the flyer (described as “dog whistle remarks” and “dog whistle politics”) “is inflammatory,” promotes “hate and fear,” “created a concern” as to whether the Board could/would “disregard a portion of the community,” and “created an impression that people would not be safe in the neighborhood” or “going to the [Board].” *Id.* at 5-6.

Although Respondent did not testify, he answered the Complaint and discovery requests; maintains that the flyer speaks for itself; acknowledges that he lent his signature and endorsement to the flyer; the nature of the flyer “leads any reasonable reader to the conclusion that [R]espondent’s actions were his individual comments and not that of” the Board; disputes that the flyer compromised the Board; and maintains that the flyer is protected free speech, factually true, or is otherwise his opinion. *Id.* at 6.

While ALJ Ascione recognized that the flyer was “distressing to the three witnesses,” he stated, “their personal reactions and statements the Board had become a hostile place toward members of their religious beliefs is not supported by any evidence.” *Id.* ALJ Ascione also indicated that simply because an individual becomes a member of a board of education does not “prevent that member from expression of his own political views, even when they dismiss the view of an opponent or the opposition in an election.” *Id.* According to ALJ Ascione, “Regretfully, political discourse, is neither attractive nor well intentioned to consider opposing views.” *Id.* ALJ Ascione also notes that “[v]arious documents,” which were “not relevant to the determination,” were excluded from evidence. *Id.*

Based on the various witness testimony and documentary evidence, ALJ Ascione issued the following findings of fact:

1. Complainant is a member of the public, and a former member of the Board. *Id.* at 7;
2. At the time the flyer was distributed, Respondent was a member of the Board, having been elected to the Board in the 2018 election. *Id.*;
3. As a member of the Board, Respondent is subject to the provisions of the Act. *Id.*;
4. Complainant did not provide any evidence that Respondent made any personal promise or took any action beyond the scope of his duties such that, by its nature, had the potential to compromise the Board. *Id.*;

5. Respondent did “surrender his independent judgment to a partisan political group by collaborating with other individuals to support certain candidates in the Democratic primary for the office of the Piscataway Township Committee.” *Id.*;

6. Respondent did not provide a disclaimer on the flyer indicating that the word “Board of Education” only reflected his membership on the Board, and did not reflect the opinion of or approval by the Board. *Id.*;

7. Respondent did not “set forth the flyer was [his] personal endorsement and not an official position or action of the [Board].” *Id.*;

8. Complainant did not present any evidence that Respondent’s actions were taken for personal gain or for the gain of a friend or family member. *Id.*;

9. Complainant did not present any evidence that Respondent disclosed any confidential information to the injury of another. *Id.*;

10. Complainant did not present any evidence that the flyer constituted an action of the Board, nor in any way compromised the Board. *Id.* at 8; and

11. The fact that the flyer reflected the names of a [C]ouncil member and a [Z]oning [B]oard member, contraindicated it was an action of the Board. *Id.*

According to ALJ Ascione, the issues in this matter are whether “Respondent violated *N.J.S.A.* 18A:12-24.1(e), [*N.J.S.A.* 18A:12-24.1(f)], and/or [*N.J.S.A.* 18A:12-24.1(g)] of the Code ... by his collaboration in the distribution of a political flyer during the 2019 Piscataway Democratic Primary election, when he subscribed his name and [the Board], on a political piece distributed in the election community without [a] disclaimer that the piece was [R]espondent’s personal endorsement and not an official position or action of the [Board],” and also whether “the content of the distributed political piece bears on the violation or the penalty to be imposed if the distribution itself violates” any of the cited provisions of the Act. *Id.*

With the above in mind, ALJ Ascione indicated that the matter must be “reviewed in the context of a contested partisan primary election in which civility appears to have been left off the ballot.” *Id.* In determining whether a violation of *N.J.S.A.* 18A:12-24.1(e) occurred, the evidence must demonstrate 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. *Id.* at 10. After review, ALJ Ascione found that “no proof has been presented that [R]espondent made any personal promises.” *Id.* As for whether Respondent’s private action might have compromised the Board, although Respondent’s statements “may have been distressing to [C]omplainant, or to a certain portion of the public[,] there was nothing in them to indicate that [R]espondent’s statements had the potential to compromise the [B]oard.” *Id.* at 10-11. Moreover, Respondent made no “representation he had the capacity to act alone to bring about any [Board] action”; as such, Complainant has not proven, by a preponderance of the credible evidence, that this provision of the Code was violated. *Id.* at 11.

Regarding the alleged violation of *N.J.S.A. 18A:12-24.1(g)*, ALJ Ascione stated that “the evidence must demonstrate that ... [R]espondent 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 ...” *Id.* at 11. In this case, “Complainant presented no evidence of such a disclosure.” While Respondent maintains that the use of the term “radical” is his personal opinion of Complainant’s “progressive leanings,” and Complainant “presents its use is inflammatory,” *Id.* ALJ Ascione maintained that he “can make no such conclusion,” and that there was insufficient evidence to establish a violation of *N.J.S.A. 18A:12-24.1(g)*. *Id.*

As for the alleged violation of *N.J.S.A. 18A:12-24.1(f)*, ALJ Ascione opined, “The violative conduct of ... [R]espondent was to fail to note a disclaimer on the flyer that his reference to the [Board] did not connote any action by the [Board], but rather he personally.” *Id.* Citing A36-14, ALJ Ascione found that Respondent’s failure to include a disclaimer “were in contravention” thereof. *Id.* As such, “Respondent’s consent to the distribution of the flyer, without specifically including a disclaimer it represented his personal conduct and not the endorsement of the [Board], rises to the level of a violation” of *N.J.S.A. 18A:12-24.1(f)*. *Id.* at 12.

Having concluded that Respondent violated *N.J.S.A. 18A:12-24.1(f)*, ALJ Ascione turned to the issue of penalty. *Id.* Because Respondent first became a Board member in January 2019, and Respondent maintains that his actions “in failing to include the disclaimer was an oversight,” ALJ Ascione found that, “[t]he combination of his limited time of service, absence of any prior violation, and representation that the action was an oversight indicates that the appropriate penalty is to reprimand [Respondent] for his participation in the distribution of the flyer.” *Id.*

### **III. Exceptions**

#### ***Complainant’s Exceptions***

In his Exceptions, Complainant first argues that ALJ Ascione “gave scant attention to the Islamophobic nature, context, distribution, and resulting harm of the flyer at issue.” As a result, ALJ Ascione “dismissed Respondent as merely being in violation of failure to provide an adequate disclaimer.” Complainant maintains the ALJ’s conclusion may be acceptable for “regular election literature”; however, Respondent’s flyer was “anything but a standard piece of election literature.” Complainant “urges the Commission to issue a censure which is far more proportional and respective to the factual and legal circumstances here.”

As for the “Factual Discussion” section of the Initial Decision, Complainant notes the following exceptions:

- On pages 2 and 8 of the Initial Decision, ALJ Ascione stated, “... by subscribing his name on a *political piece distributed in the election community* in 2019” (emphasis added). Complainant argues this “was not just any vanilla ‘political piece.’” According to Complainant, the flyer contained “highly inflammatory,” “dog-whistle politics” that was “translated in Gujarati” and disseminated to the homes of only Hindu residents. The flyer contained a picture of a Councilman, Respondent, and a member of the Zoning Board,

along with their signatures and titles – Respondent as Board member. The flyer also denoted the “Piscataway Democratic Organization,” along with, “Paid for by The Election Fund of Senator Bob Smith.” Complainant reaffirms that this is more than a “standard piece of [political] literature.”

- On page 3, ALJ Ascione writes, “The word radical had been used by both the conservative and liberal partisans of our political process to pejoratively address views of their opposition.” Complainant argues that no one “testified to support this conclusion, and no evidence was submitted to support the notion that ‘radical’ is used across the aisle such that its use in the underlying flyer should be taken in that context.” On the contrary, Complainant maintains that the actual statement contained on the flyer, “They are being challenged by a radical group under the leadership of [Complainant] that wants to take over our township government,” was “offered within a specific context of an ethnic conflict, translated and distributed only to households to which that conflict would be relevant.” According to Complainant, the flyer “targets and exploits an ethical divide for political gain,” and then notes that Respondent is part of the Board in order to validate the claims.
- On page 4, ALJ Ascione notes, “Complainant posits the word ‘radical’ in the flyer connotes, inappropriate, inflammatory, derogatory, references to a religious division[] between the Gujarati community and the Muslim community. That the use of the word is a subliminal message for Islamophobic messaging. This tribunal cannot make that distinction on the evidence presented ... which Complainant had not appropriately authenticated.” However, Complainant argues that the witness testimony, along with the letter from State Senator Bob Smith, “established by a preponderance of the evidence that the language in the flyer was inflammatory and derogatory. It clearly referenced and exploited the religious and ethnic division between the Gujarati and the Muslim communities.” In addition, Respondent “did not provide any evidence to suggest otherwise.”
- Also on page 4, Complainant argues that ALJ Ascione incorrectly notes, “Respondent does not dispute this flyer, nor his signature, nor that he consented to its distribution.” According to Complainant, Respondent did not provide testimony and his responses to “Document Requests and Interrogatories” were admitted into evidence by the ALJ as admissions. Complainant maintains that Respondent did not provide any documents nor responses in answer to Complainant’s “Request for Production of Documents” (RPD). Complainant further maintains that in his Response to Interrogatories, Respondent could “not recall” or did “not have knowledge” about anything related to the flyer. Furthermore, Complainant notes that Respondent “recalls” that he and Complainant were candidates in the November 2018 elections and that he attended training for new board members “on or about December 2018.” Complainant further notes that when Respondent was asked to provide the documents that he received at the new member training, he responded that he was unable to locate them and he would continue to look for them, “if such documents exist and are in his possession.”
- At page 5, ALJ Ascione states that Respondent “does not dispute his actions violated a portion of the [Act], but maintains it was inadvertent.” Complainant again argues this is “incorrect” because Respondent “never stated his actions violated” the Act. According to Complainant, Respondent “acknowledges the quote pulled from [A36-14] ... ,” and Respondent “does acknowledge the *safeguard* of including a disclaimer clearly stating that the member was not speaking for the entire board, *omission of which was an honest oversight, but is aware of no instance of readers of the flyer being under the impression*

that the content of the flyer was attributable to the Piscataway Township Board of Education.” Complainant argues, “the required disclaimer is not a ‘safeguard’” and instead is “a mandate handed down from the Commissioner.” Complainant further argues that Respondent either is not familiar with his ethical requirements or he “does not take them seriously,” but either way, an “honest oversight” is not a defense not to include a disclaimer, and Respondent did not accept “ownership or responsibility” for his failure to provide the disclaimer nor for the “impact of his actions.”

- On page 6, Complainant argues that ALJ Ascione mistakenly provides, “The tribunal recognizes the flyer is distressing to the three witnesses. However, their personal reactions and statements [that] the Board had become a hostile place toward members of their religious beliefs is not supported by any evidence.” Complainant submits that the three witnesses testified that the flyer “created concern over the direction by the [Board] to disregard a portion of the community,” “being fearful to appear before the [Board]” or that the flyer promoted “hate and fear.” Respondent did not provide any evidence to dispute this testimony.
- Complainant additionally “takes exception to the ALJ’s factual finding that “4. Complainant presented no evidence [Respondent] made any personal promise or take[(sic)] any action beyond the scope of his or her duties such that, by its nature, had the potential to compromise the [Board].” According to Complainant, there were several instances that were provided as evidence to support that the flyer had the potential to compromise the Board, namely, when Complainant testified that the flyer was the topic of a “contentious Piscataway Town Council meeting”; when Respondent stated, “It had an impact or we wouldn’t be here; the negative publicity the flyer attracted – “evidence not admitted by the [ALJ] on the basis of relevance”; and the language and tone of the flyer “would likely” “intimidate[.]” Muslim community members from attending Board meetings and offering “valuable” opinions.
- Complainant takes exception with ALJ Ascione’s factual finding 8, which states, “Complainant presented no evidence that [Respondent’s] actions were taken for personal gain or for the gain of a friend or family member.” Complainant argues, “The Judge’s focus was incorrect.” Complainant maintains that the allegation regarding a violation of *N.J.S.A. 18A:12-24.1(f)* was that “Respondent surrendered his independent judgment to special interest or partisan political groups,” not that Respondent “used the schools for personal gain or for the gain of friends.”
- Complainant also disagrees with ALJ Ascione’s factual finding 9, that “Complainant presented no evidence [Respondent] disclosed any confidential information to the injury of another,” and again maintains that the ALJ’s “focus was incorrect.” Complainant argues he did not allege that Respondent disclosed confidential information in violation of *N.J.S.A. 18A:12-24.1(g)*, but rather that he provided “inaccurate information” and the ALJ “ignored that allegation entirely in his decision.”
- Complainant further takes exception with the ALJ’s factual finding 10, and provides the same reasons as he did for his response to factual finding 7.
- Complainant further disagrees with ALJ Ascione’s factual finding 11, noting that in his Answer, “Respondent made the specious claim that the nature of the publication itself and the fact that Respondent appears with two other non-school board members, would lead any reasonable reader to conclude that Respondent is speaking as an individual and not expressing the views of the entire board.” However, citing, *Melnyk v. Fiel* and *I/M/O*

*Alphonse A. DeMao*, Complainant argues, “It is reasonable for a member of the public to perceive” that because Respondent did not include a disclaimer on the flyer, the content reflected his opinion and position as a member of the Board.

- On page 9 of the decision, Complainant takes exception to ALJ’s statement, “The matter must be reviewed in the context of a contested partisan primary election in which civility appears to have been left off the ballot.” Complainant argues that only Respondent engaged in “uncivil behavior” and the Code “continues to apply even during an election contest.”

Complainant also takes exception to the following findings from ALJ Ascione’s Initial Decision, to wit:

- The ALJ’s finding: “A full understanding of the parameters of ethical conduct for board members can be achieved only with training and experience.” Complainant argues it is “simple.” Respondent signed the flyer “Nitang Patel, Board of Education,” and included his picture, his signature, and a group picture that identified Respondent as a Board member. Respondent did not include a disclaimer anywhere on the flyer. Furthermore, Complainant testified that all new Board members, including Respondent, received training where the Code was “discussed and explained.” In addition, Board counsel is available for any questions. Moreover, the Commission has provided numerous advisory opinions which state that “any disclaimer must make it clear that the endorsement is as a private citizen and not as a member of a local [b]oard of [e]ducation nor is the endorsement on behalf of the entire Board.” Also, in 2019, the Commission “provided suggested language for the disclaimer.” Complainant notes, “clearly the Commission takes the issue of a disclaimer much more seriously than Respondent did at the time of the flyer, and more seriously than Respondent continues to today.”
- ALJ’s Ascione’s finding: “In determining whether a violation of *N.J.S.A. 18A:12-24.1(e)* has occurred, the evidence must demonstrate that . . . . Accordingly, the charge brought under this section has not been proven by a preponderance of the evidence.” Complainant argues that there is “no relevance” to the ALJ’s statement that because Respondent’s “conduct in regard to the flyer were related to the election, it cannot be considered in determining whether Respondent’s actions violated” *N.J.S.A. 18A:12-24.1(e)*. Complainant further argues that if that were the case, any board member “could behave in any way he or she wanted as long as their conduct was related to an election.” Complainant notes that ALJ Ascione “ignored entirely” the witnesses testimony and “focused solely” on Respondent’s “conduct.” Complainant further notes although Respondent’s conduct “met the requisite potential to compromise the Board, there was more.” More specifically, Complainant’s testimony regarding the “contentious” town council meeting, the negative publicity from the flyer, and the negative language and tone of the flyer.
- Regarding the determination that there is no evidence to support a violation of *N.J.S.A. 18A:12-24.1(g)*, Complainant reaffirms that ALJ Ascione focused on the “wrong language in” *N.J.S.A. 18A:12-24.1(g)*. Complainant maintains, “the flyer bearing Respondent’s signature and endorsement in association with ‘Board of Education’ is clearly inaccurate.” In addition, Complainant argues that the statement on the flyer that states the Piscataway Democrats, “are being challenged by a radical group under the leadership of Atif Nazir [Complainant] that wants to take over our township government”

is “false and misleading.” Complainant further argues that Respondent did not provide testimony or evidence to “substantiate the term ‘radical’” nor did Respondent “via counsel,” cross examine Complainant to establish that his views were “radical.” Complainant maintains that the three witnesses all associated the term “radical” with “Islamic extremism.” Complainant further maintains that Respondent’s “listed association” as well as “these allegations as representing” the Board “only bolsters the inaccuracy of the” flyer and supports that it is violative of *N.J.S.A. 18A:12-24.1(g)*, “because it gives the impression that it was written by or supported by the Board.” Complainant cites *Freilich* and *Bey v. Brown* to support that Respondent’s actions “clearly targeted [Complainant] who was not running for office in the election at question, and who was not a leader of any local related efforts.”

- The ALJ’s recommended penalty of reprimand is based on Respondent’s limited time on the Board, and the absence of any prior violations. Complainant argues that ALJ Ascione made his decision based on Respondent’s “participation in the distribution of the flyer”; however, Respondent did not testify and he could not recall anything as evidenced in his answers to the Interrogatories. Furthermore, according to Complainant, Respondent provided that his lack of a disclaimer was an oversight and, therefore, does not take any responsibility for his actions.
- The ALJ’s order to “seal” the entire matter. Complainant maintains that the ALJ “does not offer statutory support for sealing evidence.”
- ALJ Ascione “erred in strongly advising Respondent” that he “could invoke a blanket Fifth Amendment privilege [not to] incriminate himself.” Complainant argues that the Court “made the strong suggestion” to Respondent’s attorney to advise Respondent of his right to plead the Fifth Amendment, and when they returned from recess, Respondent did so. Complainant argues, Respondent cannot pick and choose when to plead the Fifth, and therefore, requests that Respondent be removed from the Board, or “at the very least be suspended for a year which correlates with the expiration of his three-year elected term in December 2021.”
- The Court “erred in finding” that Respondent’s failure to include a disclaimer violated *N.J.S.A. 18A:12-24.1(f)*. Complainant argues that failing to include a disclosure violates *N.J.S.A. 18A:12-24.1(e)* because it is private action that has the potential to compromise the Board, and does not violate *N.J.S.A. 18A:12-24.1(f)*.
- The Court “erred in not finding a violation of *N.J.S.A. 18A:12-24.1(f)*. Complainant maintains that it “is clear from the flyer that Respondent “took action on behalf of persons organized and voluntarily united in opinion and who adhere to a particular political party or cause.” Complainant argues that Respondent endorsed the flyer, which was “clearly meant to elicit fear in its targeted readers”; in violation of *N.J.S.A. 18A:12-24.1(f)*.

With the above in mind, Complainant requests that the Commission consider the foregoing Exceptions and arguments in rendering its decision.

### ***Response to Complainant’s Exceptions***

As of April 27, 2021, Respondent did not file a response to Complainant’s Exceptions, or otherwise file his own Exceptions to the Initial Decision.

#### IV. Public Comments Offered at the Commission’s Meeting on April 27, 2021

At the Commission’s meeting on April 27, 2021, Respondent appeared by telephone and offered public comments. More detailed information regarding the substance of Respondent’s public comments can be found in the minutes from the Commission’s meeting on April 27, 2021.<sup>2</sup>

Notwithstanding Respondent’s attendance at the Commission’s meeting on April 27, 2021, the Commission notes that the review of this matter was limited to the record as presented at the OAL.

#### V. Analysis

Upon a careful and independent review of the facts and evidence set forth in the record, the Commission **adopts** the “factual findings” numbered 1-3, and 5-9; rejects the “factual findings” numbered 4 and 10-11; rejects the legal conclusion that Complainant failed to prove, by a preponderance of the credible evidence, that Respondent violated *N.J.S.A. 18A:12-24.1(e)*; **adopts** the legal conclusion that Respondent violated *N.J.S.A. 18A:12-24.1(f)*, but *modifies* the basis therefor; and rejects the legal conclusion that Complainant failed to prove, by a preponderance of the credible evidence, that Respondent violated *N.J.S.A. 18A:12-24.1(g)*.

#### *N.J.S.A. 18A:12-24.1(e)*

In determining that Complainant failed to satisfy his burden of proof to establish a violation of *N.J.S.A. 18A:12-24.1(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”), ALJ Ascione found that Complainant failed to present evidence that Respondent made any personal promises, and also failed to show that Respondent’s private conduct might have compromised the Board. *Id.* at 11. Although ALJ Ascione acknowledged that Respondent’s statements “may have been distressing to ... [C]omplainant, or to a certain portion of the public,” he found that “there was nothing in [the statements] to indicate that [R]espondent’s statements had the potential to compromise the [B]oard” as he “made no representation he had the capacity to act alone to bring about any ... [Board] action.” *Id.*

Pursuant to *N.J.A.C. 6A:28-6.4(a)(5)*, factual evidence of a violation of *N.J.S.A. 18A:12-24.1(e)* “shall include evidence that the respondent made personal promises or took action beyond the scope of his or her duties such that, by its nature, had the potential to compromise the board.” Although the Commission agrees that Respondent did not make any personal promises, the Commission finds, as further detailed below, that Respondent took action beyond the scope of his duties as a Board member, and such action had the potential to compromise the Board.

In the Commission’s review, the record is clear that Respondent failed to include an appropriate disclaimer on the flyer, which forms the basis for the Complaint. *See id.* at 8 and 12 (“[Respondent] did not set forth a disclaimer on the flyer (P-1) that the word Board of Education

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<sup>2</sup> See <https://www.nj.gov/education/ethics/meetings.shtml>.

only reflected his membership on the ... [Board], and did not reflect the opinion of or approval by the ... [Board]”; “[Respondent] did not set forth the flyer was [R]espondent’s personal endorsement and not an official position or action of the ... [Board]”; and Respondent failed “to note a disclaimer on the flyer that his reference to the ... [Board] did not connote any action by the ... [Board], but rather he personally”). In addition, the Commission has issued decisions and advisory opinions underscoring the importance of disclaimers, and reinforcing the ramifications of failing to do so. More specifically:

Members of ... local boards of education are held to the same standards as other municipal officials regarding any conflicts of interest. ... And, a high standard was intended, as seen in the legislative findings and declarations of the Act, which is concerned with preventing violations of the public trust, or even [a] “justifiable impression among the public that such trust is being violated.” ...

The purpose of a disclaimer is to prevent board members from compromising the local boards of education by causing reasonable confusion among the public whether the board member’s statement is made as a private citizen or as a public official. ... Officials should be clear [not to] hold themselves out as a board member when attempting to engage in private actions to “ensure the public would be notified that the board member’s [writing] was written in the board member’s role as a private citizen.” In order to not hold oneself out as a board member, the official should identify themselves as a board member, but also indicate that they are writing “in their role as a private citizen and that the letter is neither authorized by nor written on behalf of the board.” ... This disclaimer will not impact the official’s First Amendment rights, and will also fulfill the Legislature’s intent behind the Act. ...

... The most clear on what the [Commission] would consider to be a sufficient endorsement is from Advisory Opinion A36-14 (Oct. 29, 2014).

In this opinion, while the [Commission] stated that it would leave it to the board members’ discretion what language should be used in a disclaimer, the [Commission] repeatedly used a phrase which indicates it may have the specific language necessary to qualify as a sufficient disclaimer. The disclaimer is: “this endorsement is [Board Member’s Name] personal one, and not as a member of the [Township] Board of Education, nor is the endorsement on behalf of the entire Board.” Because this language is used so frequently, and clearly disclaims the board member’s status in relation to the statement—as one made not in their official capacity, and not on behalf of or in relation to the board on which they sit—this phrase therefore appears to be a requirement in order to comply with the [Commission’s] disclosure requirements before a board member endorses a candidate in an election. ....

Having a disclaimer, even if it appears to be sufficient, may not be enough if the substance of the statements may reasonably lead the public to believe the official is speaking, and representing themselves as a member of the board. ...

*I/M/O Christopher T. Treston*, Randolph Township Board of Education, Morris County, Commission Docket No. 71-18, at 6-7 (*citing* the Initial Decision at 8-11) (*I/M/O Treston*).

With the above in mind, although ALJ Ascione found that Respondent's failure to include a disclaimer implicated *N.J.S.A.* 18A:12-24.1(e), and also implicated and formed the basis for finding a violation of *N.J.S.A.* 18A:12-24.1(f), the Commission finds that such failure constitutes action beyond the scope of one's duties and responsibilities as a Board member and, as such, squarely falls within the ambit of *N.J.S.A.* 18A:12-24.1(e).

The remaining question is, therefore, whether Respondent's failure to include a disclaimer had the potential to compromise the Board. In not finding that Respondent's failure had the potential to compromise the Board, ALJ Ascione cited the fact that Respondent "made no representation he had the capacity to act alone to bring about any" Board action. *Id.* at 11-12. Although the Commission agrees that Respondent did not make any affirmative representations in this regard, such affirmative action is not required to establish a violation. Instead, it is the inclusion of Respondent's Board position/status on the flyer which gives the statement (and the content of the flyer) the appearance, both actual and perceived, of having the support of, and endorsement of the Board, and/or being made on behalf of the Board as a body, and not on behalf of an individual in his personal/private capacity. Failing to include a disclaimer on what may be intended as private speech, yet specifically and deliberately relying on and referring to one's membership and service on the Board, is evidence, without more, of action that has the potential to compromise the Board. In short, when a school official cites to his Board position/office but fails to include an appropriate disclaimer, he takes action which is violative of *N.J.S.A.* 18A:12-24.1(e). See *I/M/O Treston* at 7 (finding that Respondent's "insufficient disclaimer and statements in the [O]p-[E]d were made outside the scope of his duties as a Board member, and thus violated" *N.J.S.A.* 18A:12-24.1(e) because "they had the potential to compromise the Board"). In finding that Respondent's failure to include a disclaimer violated *N.J.S.A.* 18A:12-24.1(e), the Commission specifically rejects the "Findings of Fact," namely those numbered as 4 and 10-11, indicating otherwise.

***N.J.S.A. 18A:12-24.1(f)***

In finding a violation of *N.J.S.A.* 18A:12-24.1(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 the gain of friends"), ALJ Ascione stated, "Respondent's consent to the distribution of the flyer, without specifically including a disclaimer it represented his personal conduct and not the endorsement of the ... [Board], rises to the level of a violation" of this provision of the Code. Although the Commission agrees with ALJ Ascione that Respondent violated *N.J.S.A.* 18A:12-24.1(f), the Commission finds that this violation is supported by other facts in the record, and is not wholly related to his failure to include a disclaimer.

In accordance with *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 the respondent(s) used the schools in order to acquire some benefit for [Respondent], a member of his ... immediate family or a friend.” Based on this evidentiary standard, and as evidenced by the content/substance of the flyer (including from whom it was sent), it is because Respondent surrendered “his independent judgment to a partisan political group by collaborating with other individuals to support candidates in the Democratic primary for the office of the Piscataway Township Committee,” that Respondent violated *N.J.S.A. 18A:12-24.1(f)*. Had Respondent not referenced his membership/position on the Board, and thereby inextricably linked the flyer (and its content) with being a message endorsed or supported by the Board, and/or had Respondent properly disclaimed the reference to his membership/position, Respondent would not have run afoul of *N.J.S.A. 18A:12-24.1(f)*.

***N.J.S.A. 18A:12-24.1(g)***

In the Initial Decision, and regarding the alleged violation of *N.J.S.A. 18A:12-24.1(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”), ALJ Ascione concluded that “Complainant presented no 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.” *Initial Decision* at 12. Although the Commission agrees with ALJ Ascione that Respondent did not violate the “confidentiality provision” of *N.J.S.A. 18A:12-24.1(g)*, it finds that ALJ Ascione failed to consider the “inaccurate information provision” of *N.J.S.A. 18A:12-24.1(g)* and, in its review, there is sufficient credible evidence to find a violation thereof.

Pursuant to *N.J.A.C. 6A:28-6.4(a)(7)*, 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.” In his Exceptions, Complainant argues that it is Respondent’s use of the term “radical” that is inaccurate and should serve as the basis for a violation of *N.J.S.A. 18A:12-24.1(g)*. However, because of the grossly different means ascribed to the word “radical” by both Complainant and Respondent, the Commission, like ALJ Ascione, cannot render a conclusive determination as to how Respondent (and the flyer) intended to use the term “radical,” and/or discern the message that Respondent (and the flyer) intended to convey.

Nonetheless, and in his Answer, Respondent admitted that Complainant “holds no public office, does not hold an officer position in a group running candidates in the Democratic Primary election ... and is not a candidate himself ... .” *See Answer to Complaint* at 2. Although Respondent denies that he authored the flyer, he admits that he signed and endorsed the flyer. *See Answer to Complaint* at 1. Because Respondent signed and endorsed the flyer, and referenced and relied upon his membership/position on the Board without an appropriate disclaimer in doing so, Respondent had a duty to verify the accuracy of the information set forth

in the flyer. By Respondent's own admission, the information in the flyer was inaccurate, and the fact that he may not have authored the flyer does not relieve him of responsibility for its content. In addition, and based on Respondent's admission, there is no basis upon which to believe that the inaccuracy was reasonable mistake or personal opinion, or attributable to developing circumstances. As such, the Commission finds that there is sufficient credible evidence to find a violation of *N.J.S.A. 18A:12-24.1(g)*.

## VI. Decision

For the reasons more fully detailed above, the Commission **adopts** the "factual findings" numbered 1-3, and 5-9; **rejects** the "factual findings" numbered 4 and 10-11; **rejects** the legal conclusion that Complainant failed to prove, by a preponderance of the credible evidence, that Respondent violated *N.J.S.A. 18A:12-24.1(e)*; **adopts** the legal conclusion that Respondent violated *N.J.S.A. 18A:12-24.1(f)*, but *modifies* the basis therefor; and **rejects** the legal conclusion that Complainant failed to prove, by a preponderance of the credible evidence, that Respondent violated *N.J.S.A. 18A:12-24.1(g)*.

## VII. Penalty

Based upon the conclusion that Respondent violated *N.J.S.A. 18A:12-24.1(f)*, and because "of his limited time of service, absence of any prior violation, and representation that the action was an oversight," ALJ Ascione recommended a penalty of reprimand.

Following its independent review of the facts and evidence set forth in the record, including its determination that Respondent violated *N.J.S.A. 18A:12-24.1(e)*, *N.J.S.A. 18A:12-24.1(f)*, and *N.J.S.A. 18A:12-24.1(g)*, the Commission modifies the recommended penalty of reprimand in favor of censure. In modifying ALJ Ascione's recommended penalty, the Commission finds four (4) previous decisions to be instructive, namely *Kwapniewski v. Curioni*, Lodi Board of Education, Bergen County, Commission Docket No. C70-17 (*Curioni*); *Dunbar Bey v. Brown*, Camden Board of Education, Camden County, Commission Docket No. C25-11 (*Brown*); *Fleres v. Zhong*, West Windsor-Plainsboro Board of Education, Mercer County, Commission Docket No. C17-18 (*Zhong*); and *I/M/O Treston*.

First, in *Curioni*, the respondent, a board of education member, made "multiple" references to Complainant Kwapniewski, a teaching staff member in the local school district, on his personal blog over a period of two months. *Curioni* at 4. In particular, the posts on Respondent Curioni's blog contained inaccurate or misleading information about Complainant Kwapniewski's salary; referenced Complainant Kwapniewski in a negative manner; depicted a picture of the street where she (Complainant Kwapniewski) lives; undermined her credibility with members of the local education association; questioned her qualifications for her teaching position; implied she received her position through patronage; questioned her salary and honesty; and referred to Complainant Kwapniewski as a "greedy bastard" and "union bully." *Id.* Importantly, and although Respondent Curioni had a "disclaimer" on his blog purporting to indicate that he was writing in his capacity as a private citizen, the ALJ determined that, based on his repeated reference to his status as a Board member, the blog "indisputably represents him as a Board member." *Id.* at 6. As a result, the ALJ found that Complainant Kwapniewski had

proven that Respondent Curioni's conduct violated *N.J.S.A. 18A:12-24.1(a)*, *N.J.S.A. 18A:12-24.1(c)*, *N.J.S.A. 18A:12-24.1(d)*, *N.J.S.A. 18A:12-24.1(e)*, and *N.J.S.A. 18A:12-24.1(g)*, and recommended a penalty of suspension for no less than six months. *Id.*

Although the Commission agreed that Complainant Kwapniewski had established violations of *N.J.S.A. 18A:12-24.1(c)*, *N.J.S.A. 18A:12-24.1(e)*, and *N.J.S.A. 18A:12-24.1(g)*, it rejected the determination that Respondent Curioni had violated *N.J.S.A. 18A:12-24.1(a)* and *N.J.S.A. 18A:12-24.1(d)*. *Id.* at 7-8. In terms of penalty, the Commission agreed with the ALJ that Respondent's deliberate, unnecessary, and repeated attacks on Complainant Kwapniewski, her qualifications, her salary, and her general employment, justified a harsh penalty, and, consequently, recommended a six month suspension. *Id.* at 8-9. The Commission also noted that, but for its rejection of the conclusion that Respondent Curioni violated *N.J.S.A. 18A:12-24.1(a)* and *N.J.S.A. 18A:12-24.1(d)*, the Commission would have recommended a suspension for a much longer duration, and possibly removal. *Id.* at 9.

Upon review, the Commissioner agreed with the Commission's recommended penalty of suspension for six months, citing "the severity, willfulness, and frequency of respondent's inappropriate conduct ...," and imposed same. [\*Kwapniewski v. Curioni\*](#), New Jersey Commissioner of Education, Agency Docket No. 334-12/19.

While Respondent here did not engage in a series of blogs/posts, but rather only signed and endorsed a single flyer that was related to "a contested partisan primary election in which civility appears to have been left off the ballot," the import of his failure to include an appropriate disclaimer must be considered. In the flyer at issue which, importantly, was indisputably signed and endorsed by Respondent in his capacity as a Board member (and lacked the appropriate disclaimer to indicate otherwise), Respondent, along with a local Councilman and member of the local Zoning Board, beseeched targeted members of the community to "help" Piscataway Democrats. *See* Complaint, Exhibit A. According to the flyer, Piscataway Democrats needed "help" because they were "being challenged by a radical group under the leadership of [Complainant] that wants to take over our township government." *Id.* However, in imploring the community to support Piscataway Democrats, Respondent, along with the other signatories to the flyer, publicly challenged and needlessly attacked the motives and actions of an individual (Complainant) who was, by Respondent's own admission, not running for public office.

Second, in *Brown*, the Commission found that the respondent, a board of education member, violated *N.J.S.A. 18A:12-24.1(i)* when he posted a message on his Facebook page ("Now if we could only do something about our local terrorists that destroy dreams and burn futures"), the Superintendent's photo came up as a result of the post, and he did not remove it. *Brown* at 4, 6-7. In finding a violation, the Commission stated, "when a sitting Board member makes such a judgmental proclamation, it is likely to be credited far more than a statement offered by an ordinary citizen"; therefore, the Commission recommended a penalty of censure. *Id.* at 7. In recommending censure in this matter, which it termed one of "first impression," the Commission stated, "the Commission takes this opportunity to impress upon this Respondent, as well as other Board members, that in using social media, the affirmative duties within the Code of Ethics for School Board Members may not be overlooked." *Id.* at 8. Consequently, the Commission found that censure was "an appropriate sanction to convey this message." *Id.*

Upon review, the Commissioner found that, due to the absence of prior violations by Respondent Brown, reprimand was the more appropriate penalty. *Dunbar Bey v. Brown*, New Jersey Commissioner of Education, Agency Docket No. 365-12/11.

Third, in *Zhong*, the respondent, also a board of education member, received a message from a parent within the school district about an incident, which resulted in the discipline of a high school student. *Zhong* at 2. Respondent Zhong forwarded the message via WeChat to a group of people solely consisting of members of his immediate family. *Id.* Thereafter, one of Respondent Zhong's immediate family members forwarded the message to "countless" others, and it eventually made its way to the student who was the subject of the initiating message. *Id.* Following her review, the ALJ determined that Respondent Zhong had violated the confidentiality provision of *N.J.S.A. 18A:12-24.1(g)*, and recommended a penalty of reprimand. *Id.* at 1. The basis for the ALJ's recommended penalty was that Respondent acknowledged that he made a mistake, and indicated that he did not intend to disclose the information to anyone outside of his immediate family. *Id.* at 4.

While the Commission agreed that Respondent Zhong's conduct violated the confidentiality provision of *N.J.S.A. 18A:12-24.1(g)*, it rejected the recommended penalty of reprimand in favor of censure. *Id.* In finding that a more severe penalty was appropriate, the Commission stated, "Respondent seems to overlook the fact that confidential information, which is shared with him because he is a Board member, should not be shared with anyone, including members of his own family until, at the very least, the information is no longer confidential." *Id.* As such, and "in order to impress upon Respondent the fundamental importance of safeguarding confidential information," the Commission recommended a penalty of censure. *Id.*

Of importance here, the Commissioner concurred with the penalty of censure for Respondent Zhong. *Fleres v. Zhong*, New Jersey Commissioner of Education, Agency Docket No. 105-5/19 (emphasis added). In short, although the absence of a prior violation(s) is relevant in determining the appropriate penalty, *Zhong* recognizes that, in certain circumstances, which are present here, a penalty greater than reprimand is warranted for a first-time offense.

Finally, and in a very recent case with facts analogous to those at issue here, the respondent, a board of education member, was found to have violated the Act when he used an insufficient disclaimer in an Op-Ed, which publicly endorsed certain candidates for the Board to the detriment of others. *I/M/O Treston* at 2-3. Ultimately, the Commission adopted the ALJ's legal conclusion that because Respondent Treston's disclaimer in an Op-Ed was "insufficient to convey that he was expressing his personal opinion, largely due to his multiple references to his position on the Board and Board matters generally," and "there was an 'unwarranted' advantage to the candidates [R]espondent endorsed by virtue of the appearance that they were receiving a Board endorsement," a violation of *N.J.S.A. 18A:12-24(b)* had been established. *Id.* at 7. The Commission further adopted the ALJ's legal determination that Respondent Treston's "insufficient disclaimer and statements in the [O]p-[E]d were made outside the scope of his duties as a Board member, and thus violated" *N.J.S.A. 18A:12-24.1(e)* because "they had the potential to compromise the Board." *Id.*

Citing *Curioni*, *Brown*, and *Zhong* as above, as well as the import of Respondent Treston's failure to include an appropriate disclaimer, and the pitfalls associated with inadequately addressing or penalizing school officials who fail to appropriately disclaim their speech, the Commission also modified the ALJ's recommended penalty of reprimand in favor of censure. In support of its position, the Commission argued:

... Although, in [*Brown*], the Commissioner downgraded the Commission's recommended penalty of censure in favor of reprimand because there was an absence of prior infractions, the conduct at issue in that case ([*Brown*]) was far less egregious, deliberate, and purposeful than Respondent's actions [in *I/M/O Treston*]. In addition, in *Brown*, the Commission appropriately recognized the potential pitfalls associated with the use of social media by school officials and attempted, at that time, to send a cautionary warning to the field. Now, more than a decade later, when use of social media and online publications has become commonplace, prolific, pervasive, and often times divisive, and given that there has been a significant influx in the number of complaints filed with the Commission regarding use (or non-use) of disclaimers in electronic publications (not just on social media), it is now more critical than ever to underscore and emphasize that when Board members want to speak as private citizens, they must include an appropriate disclaimer that makes the capacity in which they are speaking clear and unambiguous. In addition, even if an appropriate disclaimer is used, a school official must never negate the import of the disclaimer by proceeding, under the purported protection of a disclaimer, to discuss or comment on Board business or matters in a way that leads a member of the public to believe that the individual is speaking on behalf of, and as a representative of, the Board.  
....

*I/M/O Treston* at 12.<sup>3</sup>

For all of the reasons detailed in *I/M/O Treston*, which are equally relevant and applicable here, and even though Respondent has never before been found in violation of the Act, the Commission recommends that Respondent be **censured** for having violated *multiple* provisions of the Code, namely *N.J.S.A. 18A:12-24.1(e)*, *N.J.S.A. 18A:12-24.1(f)*, and *N.J.S.A. 18A:12-24.1(g)*. This matter, which follows on the heels of a similar case involving misuse, or failure to include a disclaimer, only serves to highlight the need to publicly admonish school officials who fail to act in accordance with their ethical obligations under the Act.

Pursuant to *N.J.S.A. 18A:12-29(c)*, this decision shall be forwarded to the Commissioner of Education (Commissioner) for review of the Commission's recommended sanctions. Parties may either: 1) file exceptions to the recommended sanction; 2) file an appeal of the Commission's findings of violations of the Act; or 3) file both exceptions to the recommended sanction and an appeal of the Commission's findings of violations of the Act.

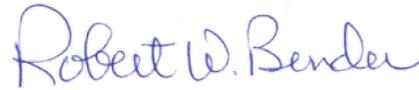
Parties taking exception to the recommended sanctions of the Commission but *not disputing* the Commission's findings of violations may file, within **thirteen (13) days** from the

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<sup>3</sup> This matter remains pending before the Commissioner of Education for final decision.

date the Commission's decision is forwarded to the Commissioner, written exceptions regarding the recommended sanctions to the Commissioner. The forwarding date shall be the mailing date to the parties, as indicated below. Such exceptions must be forwarded to: Commissioner of Education, c/o Bureau of Controversies and Disputes, P.O. Box 500, Trenton, New Jersey 08625, marked "Attention: Comments on Ethics Commission Sanction." A copy of any comments filed must be sent to the Commission and all other parties.

Parties seeking to appeal the Commission's findings of violations *must* file an appeal pursuant to the standards set forth at *N.J.A.C. 6A:4, et seq.* within **thirty (30) days** of the filing date of the decision from which the appeal is taken. The filing date shall be three (3) days after the mailing date to the parties, as indicated below. In such cases, the Commissioner's review of the Commission's recommended sanctions will be deferred and incorporated into the Commissioner's review of the findings of violations on appeal. Where a notice of appeal has been filed on or before the due date for exceptions to the Commission's recommended sanction (thirteen (13) days from the date the decision is mailed by the Commission), exceptions need not be filed by that date, but may be incorporated into the appellant's brief on appeal.



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Robert W. Bender, Chairperson  
School Ethics Commission

Mailing Date: May 25, 2021

## ***Resolution Adopting Decision in Connection with C43-19***

***Whereas***, at its meeting on August 27, 2019, and after considering the parties' submissions in connection with the above-referenced matter, the School Ethics Commission (Commission) voted to find that the Complaint was not frivolous, and denied Respondent's request for sanctions; and

***Whereas***, at its meeting on August 27, 2019, the Commission also voted to transmit the above-captioned matter to the Office of Administrative Law (OAL) for a plenary hearing, at which Complainant would carry the burden to prove the alleged violation of *N.J.S.A. 18A:12-24.1(e)* and *N.J.S.A. 18A:12-24.1(g)* of the Code of Ethics for School Board Members (Code) within the standards set forth in *N.J.A.C. 6A:28-6.4*; and

***Whereas***, at the OAL, Complainant amended his Complaint to include an alleged violation of *N.J.S.A. 18A:12-24.1(f)*; and

***Whereas***, at the OAL, and after a Zoom hearing, the Honorable Joseph A. Ascione, Administrative Law Judge (ALJ Ascione) issued an Initial Decision dated March 11, 2021; and

***Whereas***, in his Initial Decision, ALJ Ascione found that Respondent violated *N.J.S.A. 18A:12-24.1(f)*, Respondent did not violate *N.J.S.A. 18A:12-24.1(e)* and/or *N.J.S.A. 18A:12-24.1(g)*; and recommended a penalty of reprimand; and

***Whereas***, on March 24, 2021, Complainant filed Exceptions to ALJ Ascione's Initial Decision; and

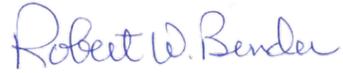
***Whereas***, as of April 27, 2021, Respondent did not file a reply to Complainant's Exceptions to the Initial Decision or otherwise file his own Exceptions; and

***Whereas***, at its meeting on April 27, 2021, the Commission reviewed and discussed the full record in the above-captioned matter; and

***Whereas***, at its meeting on April 27, 2021, the Commission discussed adopting the "factual findings" numbered 1-3, and 5-9; rejecting the "factual findings" numbered 4 and 10-11; rejecting the legal conclusion that Complainant failed to prove, by a preponderance of the credible evidence, that Respondent violated *N.J.S.A. 18A:12-24.1(e)*; adopting the legal conclusion that Respondent violated *N.J.S.A. 18A:12-24.1(f)*, but *modifying* the basis therefor; rejecting the legal conclusion that Complainant failed to prove, by a preponderance of the credible evidence, that Respondent violated *N.J.S.A. 18A:12-24.1(g)*; and modifying the recommending penalty of reprimand in favor of censure; and

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

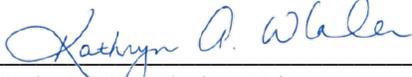
*Now Therefore Be It Resolved*, the Commission hereby adopts the within decision.



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Robert W. Bender, Chairperson

I hereby certify that this Resolution was duly adopted by the School Ethics Commission at its meeting on May 25, 2021.



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Kathryn A. Whalen, Director  
School Ethics Commission