

New Jersey Commissioner of Education
Final Decision

In the Matter of Regina Discenza, Lacey Township
Board of Education, Ocean, County.

The record of this matter, the decision of the School Ethics Commission (SEC), the exceptions filed by respondent, and the reply thereto by the SEC have been reviewed. The SEC found that respondent violated *N.J.S.A. 18A:12-24(b)*, *N.J.S.A. 18A:12-24.1(e)*, and *N.J.S.A. 18A:12-24.1(f)* of the School Ethics Act (Act) and recommended a penalty of censure. The SEC's decision was forwarded to the Commissioner for final determination on the recommended penalty pursuant to *N.J.S.A. 18A:12-29(c)*. Respondent has not instituted an appeal of the SEC's underlying finding of violation pursuant to *N.J.A.C. 6A:4-1 et seq.* but has filed exceptions to the recommended penalty.

In her exceptions, respondent urges the Commissioner to impose the penalty of a reprimand recommended by the Administrative Law Judge, rather than the modified penalty of censure recommended by the SEC. Respondent contends that, in the absence of multiple violative acts or aggravating factors, a reprimand is the appropriate penalty for violating the Act. Respondent points to other SEC matters in which board members engaged in what she alleges is behavior analogous to her own and only received reprimands, while board members who engaged in what respondent characterizes as more egregious behavior received censures.

In reply, the SEC argues that it is well-settled that a board member making a political endorsement must include a disclaimer indicating that their opinions are not those of the board.

The SEC distinguishes the cases relied on by respondent and contends that respondent's behavior was sufficiently egregious to warrant a censure.

Upon review, the Commissioner concurs with the penalty recommended by the SEC. Respondent's reliance on the Commissioner's decisions in *Dubar Bey v. Brown*, Commissioner Decision No. 102-12SEC (Mar. 20, 2012), and *I/M/O S.J.*, Commissioner Decision No. 116-24 (Feb. 20, 2024), is misplaced. Initially, neither matter involved a board member's endorsement of a candidate. Additionally, S.J. was found to have violated two provisions of the Act, and Brown was found to have violated only one; here, the SEC found that respondent violated three provisions of the Act. Furthermore, in *S.J.*, the Commissioner reduced the penalty of censure recommended by the SEC to a penalty of reprimand based on S.J.'s reliance on the advice of counsel; here, there is no such defense to respondents' actions. In *Brown*, the case was one of first impression regarding board members' social media postings; here, the SEC and the Commissioner have previously issued advisory opinions and decisions regarding endorsements that respondent could have used as guidance for her actions, but she failed to do so.

Respondent also points to the Commissioner's decision in *I/M/O Treston*, Commissioner Decision No. 208-21SEC (Sept. 30, 2021), which did involve a board member endorsement. While the Commissioner reduced the SEC's recommended penalty of censure to a reprimand in *Treston*, Treston did attempt to represent his views as his own by including a disclaimer, although that disclaimer was determined to be insufficient. Here, respondent made no such attempt at a disclaimer. In a prior matter in which a board member distributed political materials referencing his position on the board and failed to include any type of disclaimer, the SEC recommended, and the

Commissioner upheld, a penalty of censure, even though it was the board member's first offense.¹ *Nazir v. Patel*, Commissioner Decision No. 164-21SEC (Aug. 12, 2021). The Commissioner therefore concludes that a penalty of censure is appropriate.

Accordingly, respondent is censured for violating the School Ethics Act.

IT IS SO ORDERED.²



COMMISSIONER OF EDUCATION

Date of Decision: March 3, 2025

Date of Mailing: March 5, 2025

¹ Respondent attempts to distinguish *Patel* by pointing to the inflammatory nature of the content distributed by the board member in that matter, and arguing that respondent's conduct did not contain any such "aggravating factor." However, the Commissioner's decision in *Patel* did not analyze the nature of the comments themselves, and addressed only the board member's use of his status as a board member on a political flyer without any type of disclaimer.

² This decision may be appealed to the Appellate Division of the Superior Court pursuant to *N.J.S.A. 18A:6-9.1*. Under *N.J.Ct.R. 2:4-1(b)*, a notice of appeal must be filed with the Appellate Division within 45 days from the date of mailing of this decision.

Before the School Ethics Commission
OAL Docket No.: EEC-06738-20
SEC Docket No.: C75-19
Final Decision

I/M/O Regina Discenza,
Lacey Township Board of Education, Ocean County
Respondent

I. Procedural History

The above-captioned matter arises from a Complaint that was filed with the School Ethics Commission (Commission) on December 26, 2019, by Shawn Giordano, Frank Palino, Linda Downing, Harold Peters, Nicholas Mirandi, and Donna McAvoy (Complainants), alleging that Regina Discenza (Respondent), a member of the Lacey Township Board of Education (Board), violated the School Ethics Act (Act), *N.J.S.A. 18A:12-21 et seq.* More specifically, Complainants asserted that Respondent violated *N.J.S.A. 18A:12-24(b)* (Counts 1-4), as well as *N.J.S.A. 18A:12-24.1(e)* (Counts 1-4) and *N.J.S.A. 18A:12-24.1(f)* (Counts 1-3) of the Code of Ethics for School Board Members (Code).

At its meeting on May 19, 2020, and after reviewing Respondent's Motion to Dismiss in Lieu of Answer (Motion to Dismiss) and allegation that the Complaint is frivolous, and Complainants' response thereto, the Commission adopted a decision granting the Motion to Dismiss as to the allegations in Count 1 and Count 2, denying the Motion to Dismiss as to the allegations in Count 3 and Count 4, finding the Complaint is not frivolous, and denying the request for sanctions. Based on its decision, the Commission voted to direct Respondent to file an Answer to Complaint (Answer) to the allegations in Counts 3 and 4, which she did on June 2, 2020.

At its meeting on July 21, 2020, the Commission voted to find probable cause for the remaining allegations in this matter in Counts 3 and 4. Based on its finding of probable cause, the Commission voted to transmit the within matter to the Office of Administrative Law (OAL) for a hearing.

At the OAL, this matter was initially consolidated with a complaint against Shawn Giordano (C04-20). Following cross-motions on summary decision, the Administrative Law Judge (ALJ) issued an Order on Partial Summary Decision (Order) on February 27, 2023, finding that Respondent violated *N.J.S.A. 18A:12-24(b)*, *N.J.S.A. 18A:12-24.1(e)* and *N.J.S.A. 18A:12-24.1(f)* in Count 3, but determining that summary decision was not appropriate for the allegations in Count 4. The Order also resolved the entire case against Shawn Giordano, and therefore, the consolidated matters were severed. Thereafter, following a hearing as to the allegations in Count 4, the ALJ issued an Initial Decision on August 22, 2024, finding that Respondent did not violate *N.J.S.A. 18A:12-24(b)* and/or *N.J.S.A. 18A:12-24.1(e)* in Count 4, and recommending a penalty of reprimand for the violations in Count 3. Subsequently, Petitioner

filed exceptions to the Initial Decision, in accordance with *N.J.A.C.* 1:1-18.4, and Respondent filed a reply thereto.

At its meeting on November 26, 2024, the Commission considered the full record in this matter. Thereafter, at its meeting on December 17, 2024, the Commission voted to adopt the legal conclusions that Respondent violated *N.J.S.A.* 18A:12-24(b), *N.J.S.A.* 18A:12-24.1(e) and *N.J.S.A.* 18A:12-24.1(f) in Count 3, but did not violate *N.J.S.A.* 18A:12-24(b) and/or *N.J.S.A.* 18A:12-24.1(e) in Count 4, and voted to modify the recommended penalty of reprimand in favor of censure.

II. Initial Decision and Order on Partial Summary Decision

A. Count 3

On November 1, 2019, a video was posted to the “Marchitello, Rozzi & Armato for Lacey Board of Education” Facebook group page, which showed Respondent endorsing the three candidates, who were running under the title “Team 147.” *Order* at 3. The caption to the video read, “Thank you to Lacey School Board Member Discenza for her endorsement and support! With a new majority on the school board, we can bring a new year of change and fiscal responsibility.” *Ibid.* In the video, Respondent is wearing her Board identification badge and states:

Hello, my name is Regina Discenza. I am currently serving my second term on the Lacey School Board and I thank you for your votes of confidence in 2017 and 2014. This November 5th, the taxpayers in Lacey Township have a very big decision to make and they have the power to make historic change. Please help me serve you the taxpayers on November 5th and vote for Team 147 to assist me on the Board. A new majority for change and fiscal responsibility. . . . There is a 28-year incumbent candidate with conflicts and another with lifetime connections to employees. They do not have the ability to act impartially, it’s human nature. Team 147 has no conflicts of interest and no relatives working for the district. All of us can act impartially while performing our duties with no ties to any union. The New Jersey Citizens for Property Tax Reform and I endorse and support Sonia Marchitello, Gavin Rozzi, and Sam Armato for Lacey School Board. On November 5th, please make your voice heard, go to the polls and vote Column D candidates 147. There’s no room for politics in Education. Thank you. . . .”

[*Id.* at 3-4.]

B. Count 4

On November 5, 2019, Respondent went to a polling site for districts 8 and 13 to “collect a copy of the tally sheets and tapes,” but was informed by a poll worker (Peggy Sue Juliano) that the “county clerk only permitted a certain number of tapes to be produced at the polling place, and [Respondent] would need to go to city hall to receive a copy.” *Initial Decision* at 3. After insisting that she receive a copy and arguing that there was no such rule, Respondent eventually received the tape and left the polling site. *Ibid.* Written statements provided by two poll workers (Juliano and Louise Quist) from shortly after the incident contend that Respondent was at the polling site “on behalf of the Board to collect tally sheets and tapes for the Board.” Respondent contends she requested the tally sheets “on behalf of Team 1-4-7.” *Ibid.*

At the hearing, the two poll workers (Juliano and Quist) testified that Respondent arrived after the close of polling and requested the machine tapes for the respective districts on behalf of the Board, and after Juliano called the municipal clerk for guidance, Respondent was provided with the requested tapes. *Id.* at 4. The municipal clerk (Veronica Laureigh) testified that although it is not the clerk’s responsibility, but rather County Board of Elections, she did receive a text message (not a phone call) from a poll worker “regarding the number of tapes to be printed, well before closing time for the polling place.” *Id.* at 4-5. Another poll worker (Ellen Vidal) noted that it “is common for supporters to request machine tapes,” and she did not recall Respondent requesting the tapes on behalf of the Board. *Id.* at 5. Respondent “denies identifying herself as requesting the tapes on behalf of the Board or otherwise invoking her role as a Board member.” *Ibid.*

The ALJ noted that “[c]onsidering the testimony presented and the documents placed in evidence, it appears that a consensus has developed,” and therefore, the ALJ found that Respondent was “at all times entitled to request and obtain [a] copy of the tally sheets and tape for districts 8 and 13 at the polling location on election night.” *Ibid.* The ALJ found that all witnesses “provided competent, sincere testimony” and Respondent and the poll workers were the only witnesses present at the polling site. *Ibid.* The ALJ noted that Respondent ultimately received a copy of the poll tapes, and according to the witnesses, the tapes could not be printed if the machines were shut down; therefore, because none of the witnesses indicated that they had to “re-open” the machines in order to print a copy for Respondent, the ALJ found that Respondent arrived at the polling site before shut-down. *Id.* at 5-6. Finally, the ALJ explained that the testimonies of poll workers Juliano and Quist “offered inconsistencies with the substance of their written statements, which themselves were created several weeks after the incident.” *Id.* at 6. The ALJ further explained that the municipal clerk’s testimony “that she did not receive any phone call from Juliano on the evening in question or any messages from her since well before shut-down seem to contradict Juliano’s testimony that she reached out in the moment to Laureigh for guidance.” *Ibid.* Therefore, the ALJ found that the Commission has not demonstrated, by a preponderance of evidence, that Respondent referenced her position on the Board, and/or otherwise used her position on the Board to obtain the poll tapes in question. *Id.* at 6-7.

C. Conclusions of Law

As to the endorsement in Count 3, the ALJ found that “there is no evidence that [Respondent] included, or intended to include a disclaimer, with her endorsement of the candidates”; therefore, she did not. *Order* at 12. The ALJ noted that even if Respondent included a disclaimer, it would have been negated by the substance of her statements as a reasonable member of the public could see her making those statements on behalf of the Board. *Ibid.* The ALJ further found that Respondent made multiple references to her position on the Board. *Ibid.* To this end, the ALJ noted that “the fact that [Respondent] never expressly said she was acting in her official capacity or on behalf of the Board is not material.” *Ibid.* Moreover, there is insufficient evidence in the record to show that Respondent made this endorsement at the request of “Team 147” or any other candidates; however, the endorsement would have benefitted the candidates, and as Respondent noted in her endorsement, the election of the candidates would benefit her. *Ibid.* Additionally, the ALJ found, Respondent’s endorsement had the potential to compromise the Board because it “call[s] into question the impartiality and autonomy of the Board and its members.” *Id.* at 13. Therefore, the ALJ concluded that there is sufficient evidence to demonstrate that Respondent’s endorsement of the candidates on Team 147, without an appropriate disclaimer, violated *N.J.S.A.* 18A:12-24(b), *N.J.S.A.* 18A:12-24.1(e), and *N.J.S.A.* 18A:12-24.1(f). *Ibid.*

As to the polling site in Count 4, the ALJ found the “record reflects that [R]espondent at all times was able to request and obtain [a] copy of the tally sheets and tapes for districts 8 and 13 at the polling location on election night,” and therefore, the ALJ concluded that “no unwarranted privileges, advantages or employment were sought or obtained by [R]espondent on her own behalf or on behalf of anyone else.” *Initial Decision* at 10. Furthermore, the ALJ noted that both “charges require a determination as to whether [R]espondent referenced her position on the Board, and/or otherwise used her position on the Board to obtain this information.” *Ibid.* To this end, the ALJ found the “record reflects that this has not been demonstrated by a preponderance of credible evidence, to have occurred,” and therefore, the ALJ concluded that the alleged violations of *N.J.S.A.* 18A:12-24(b) and *N.J.S.A.* 18A:12-24.1(e) relating to Respondent’s conduct at the polling site must be dismissed. *Ibid.*

D. Penalty

With respect to the appropriate penalty for the violations of *N.J.S.A.* 18A:12-24(b), *N.J.S.A.* 18A:12-24.1(e), and *N.J.S.A.* 18A:12-24.1(f) in Count 3, the ALJ found the violations in question do not appear to be de minimis, and therefore, sanctions are appropriate. *Id.* at 11. Because Respondent is no longer on the Board, the ALJ concluded that a reprimand is appropriate. *Ibid.* The ALJ noted that “[g]iven the totality of the circumstances[,] the charges do not seem to support a formal action of censure.” *Ibid.*

III. Exceptions

Petitioner's Exceptions

Petitioner initially argues, “the Commission takes exceptions to the ALJ’s failure to substantiate both allegations, as well as the ALJ’s determination that only a penalty of reprimand should be imposed, because he failed to consider relevant evidence in the record in rendering his decision.”

First, Petitioner asserts that the ALJ “rendered his [I]nitial [D]ecision based on findings of fact that ignored important evidence,” and therefore, the ALJ’s determination “was in error.” Specifically, Petitioner notes the ALJ “erroneously concluded that [Respondent] must have arrived before the polls closed because she eventually received a copy of the tapes.” However, Petitioner argues the ALJ did not consider the municipal clerk’s testimony, and even if Respondent “eventually received polling tapes from a machine that night, that is not evidence that she arrived prior to polls closing.” Instead, Petitioner argues that it is “only evidence that she arrived before the machines were turned off, which would have happened after 8:00 p.m.” Therefore, Petitioner provides that the ALJ’s conclusion regarding Respondent’s arrival at the polling site was “arbitrary and unreasonable, and not supported by the record.” According to Petitioner, the ALJ also “ignored other important evidence,” which established Respondent’s arrival at the polling site after the polls closed, namely Respondent’s own witnesses, including a poll worker (Vidal) who testified that she could not hear Respondent’s conversation because she was shutting down a machine and printing tapes. Petitioner maintains that the timing of Respondent’s “arrival was key to the ALJ’s conclusion regarding Count [4]”; however, the record does not support his conclusion that Respondent arrived before the polling site shut down, and therefore, the ALJ’s finding “has no basis.”

Petitioner contends that the “ALJ’s decision contains additional errors that affected his analysis and conclusions.” More specifically, Petitioner contends that Respondent testified that the poll worker (Juliano) was texting the municipal clerk the entire fifteen minutes she was there; however, Petitioner argues “there is nothing in the record indicating Juliano was texting with Laureigh.” Moreover, the ALJ relied “upon supposed inconsistencies between the testimony of Juliano/Quist and statements they wrote a few weeks after the incident,” but Petitioner maintains that any inconsistencies are not material. Petitioner asserts that the ALJ’s decision “overlooked critical evidence that [Respondent] was wearing a pin on her lapel identifying her as a member of the Board,” but the ALJ “had previously relied upon the fact that [Respondent] wore a Board identification badge during her endorsement video in his summary decision concerning Count [3].” Per Petitioner, the ALJ’s “failure to consider that fact for the purpose of Count [4], after having previously relied upon it for the purposes of Count [3], was arbitrary.”

Next, Petitioner contends the ALJ “failed to consider the entire record and correctly apply it to the law” as it related to Count 4. According to Petitioner, the ALJ “failed to apply the Commission’s previous interpretations of the Act when he found that [Respondent] did not violate it because she was able to request and obtain the poll tapes.” Petitioner argues a “violation of the Act does not hinge on whether a Board member actually receives financial or other gain.” Petitioner further argues Respondent’s “actions created an appearance of

impropriety warranting censure.” Petitioner provides that Respondent, “while displaying an identification badge indicating she was a member of the Board, invoked her Board position to demand poll tapes on behalf of her preferred candidates for the Board despite the poll workers’ statements that they could not provide them.” Petitioner argues that witness testimony supports that Respondent was “demanding” and although tapes could be provided to anyone prior to the poll’s closing, to any “reasonable observer,” Respondent “invoked her position to demand polling information after the close of polls, long after such requests were typically made and moments before polling machines were turned off.” Therefore, Petitioner maintains “any member of the public could thus reasonably conclude [Respondent] was using her Board position to obtain information she was not otherwise entitled to receive on behalf of her preferred candidates, creating a clear appearance of impropriety,” and also had the potential to compromise the Board. According to Petitioner, witness testimony “indicates that [Respondent] arrived in the midst of polls being shutdown,” but she invoked her Board status to obtain the tapes. Therefore, Petitioner argues Respondent violated the Act and the Code because her “attempt to leverage her position is precisely the sort of action that can compromise the integrity and impartiality of the Board and its members, warranting a penalty.”

Finally, as to penalty, Petitioner maintains the Commission should reject the ALJ’s recommendation of a reprimand and modify it to issue a censure instead. Petitioner argues that in Count 4, Respondent “engaged in conduct which could reasonably be seen as an attempt to use her Board position to obtain information for her preferred candidates for the Board.” As to Count 3, Petitioner further maintains Respondent’s “flagrant references to her Board position . . . are sufficiently egregious to warrant” a penalty of censure. Petitioner argues a censure “would serve to inform all Board members that their actions toward members of the public when they appear to be acting in their capacity as Board members must comport with the ethical requirements under the Act and Code.”

Respondent’s Reply to Petitioner’s Exceptions

Respondent initially argues that the ALJ correctly concluded that Respondent had the right to request and receive the tapes, and that the ALJ did not ignore testimony. Respondent contends that the ALJ’s “determination that [Respondent] arrived at [the polling site] on time to request and receive poll tapes is well-supported by the record.” According to Respondent, after careful consideration of the evidence, the ALJ concluded “that the preponderance of credible evidence” demonstrated that Respondent was entitled to and received the tapes.

Next, Respondent asserts that the ALJ correctly concluded that there was not enough evidence to show that Respondent referenced her Board status to obtain the poll tapes. Respondent maintains the testimony shows that “it was not arbitrary or unreasonable for [the ALJ] to conclude” that the evidence failed to demonstrate that Respondent used her position on the Board. Respondent points out that she and Team 147 all testified that she was there to pick up poll tapes on behalf of the Team, and the remainder of the witness testimony and the written letters were inconsistent. Respondent argues there is a lack of evidence to demonstrate that she referenced her Board status, and therefore, the ALJ’s conclusion was correct.

According to Respondent, Petitioner “misinterprets the ALJ’s focus on the fact that [Respondent] ‘was able to request and obtain poll tapes.’” Per Respondent, although Petitioner “made clear that actual harm is not decisive in determining whether there has been a violation,” the ALJ’s conclusion regarding Count 4, “was not based on a ‘no harm-no foul’ analysis.” On the contrary, Respondent maintains the ALJ merely acknowledged that Respondent obtained the poll tapes; however, in order to prove violations of *N.J.S.A.* 18A:12-24(b) and *N.J.S.A.* 18A:12-24.1(e), Petitioner “was required to prove all three elements by a preponderance of evidence,” namely whether Respondent referenced her Board status, whether Respondent was entitled to request the tapes, and the potential outcome of Respondent’s actions. According to Respondent, Petitioner did not, and therefore, the ALJ accurately concluded that Respondent did not violate the Act because “she did not reference her Board position, and she did not demand information that she was not entitled to receive.”

Respondent notes that Shawn Giordano (one of the Complainants) and Respondent had a tenuous relationship. Respondent further notes that her visit to the polling site “was not alleged by anyone to have been problematic until six weeks later,” when Giordano requested Quist and Juliano to write their letters days after an ethics complaint was filed against Giordano. Respondent maintains her belief that the timing and Giordano’s targeted attacks of Respondent “is likely accurate and should not be ignored.”

With the above in mind, Respondent contends the ALJ issued the appropriate penalty. Although Respondent’s endorsement video was found to be violative because she conflated her Board membership with her private endorsement, there are no facts suggesting that her video contained any combative, malicious language.” Therefore, Respondent further contends, in light of her otherwise unblemished record, she “should not be subject to anything more severe than a reprimand in connection with her comparatively benign endorsement.” Therefore, Respondent “respectfully requests” that the Commission reject Petitioner’s exceptions and adopt the ALJ’s decision.

IV. Analysis

Upon a careful, thorough, and independent review of the record, the Commission agrees with the ALJ’s legal conclusions that Respondent violated *N.J.S.A.* 18A:12-24(b), *N.J.S.A.* 18A:12-24.1(e) and *N.J.S.A.* 18A:12-24.1(f) in Count 3, but did not violate *N.J.S.A.* 18A:12-24(b) and/or *N.J.S.A.* 18A:12-24.1(e) in Count 4. However, the Commission modifies the recommended penalty of reprimand in favor of censure.

N.J.S.A. 18A:12-24(b) prohibits a school official from using or attempting to use her official position to secure unwarranted privileges, advantages or employment for herself, members of her immediate family or others.

Under *N.J.S.A.* 18A:12-24.1(e), a board member must recognize that authority rests with the board and a board member shall not make any personal promises or take any action that may compromise the board.

Pursuant to *N.J.S.A.* 18A:12-24.1(f), a board member must refuse to surrender independent judgment to special interest or partisan groups or use the schools for personal gain or for the gain of friends.

As a preliminary matter, the Commission finds it necessary to set forth the framework by which it will review the allegations in Count 3. The Commission has explained that in order for a social media post to be offered pursuant to official duties, there must be a sufficient nexus between the social media page and the role/membership on the Board. *Hodirinsky v. Faussette, Hasbrouck Heights Board of Education, Bergen County*, Docket No. C11-21 (August 30, 2021); *Donnerstag, et al. v. Borawski, Central Regional Board of Education, Ocean County*, Docket No. C20-22 (August 22, 2023); *Donnerstag, et al. v. Koenig, Central Regional Board of Education, Ocean County*, Docket No. C19-22 (August 22, 2023). Additionally, as the Commission explained in *Aziz v. Nikitinsky et al., Monroe Township Board of Education, Middlesex County*, Docket No. C56-22 (October 17, 2022):

As a general matter, a school official does not violate the Act merely because he/she engages in social media activity. Instead, the Commission's analysis is guided by whether a reasonable member of the public could perceive that the school official is speaking in his or her official capacity or pursuant to his or her official duties. Whether a school official is perceived as speaking in his or her official capacity and pursuant to his or her official duties turns, in large part, on the content of the speech. If the speech in question has absolutely no correlation or relationship to the business of the Board and/or its operations and, therefore, could not possibly be regarded as a statement or position on behalf of the Board (as a body), a school official will not violate the Act. Conversely, if the speech in question *does* relate to the business of the Board and/or its operations, it is then reasonable for the reader to perceive the speech as being offered in an official capacity and pursuant to his or her official duties. Nonetheless, the filing party would still need to prove *all* elements of the cited provision of the Act ...

Moreover, the use of a disclaimer on social media can help to clarify whether an individual is speaking in his or her official capacity and pursuant to his or her official duties; however, the presence of a disclaimer is not dispositive. In previous advisory opinions and decisions, the Commission has stated that disclaimers such as, "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," or "THE FOLLOWING STATEMENTS ARE MADE IN MY CAPACITY AS A PRIVATE CITIZEN, AND NOT IN MY CAPACITY AS A BOARD MEMBER. THESE STATEMENTS ARE ALSO NOT REPRESENTATIVE OF THE BOARD OR ITS INDIVIDUAL MEMBERS, AND SOLELY REPRESENT MY OWN PERSONAL OPINIONS" would be appropriate. *Advisory Opinion A36-14* (October 29, 2014); [*I/M/O Treston, Randolph Township Board of Education, Morris County*, Docket No. C71-18 (April 27, 2021)]. The failure of a school official to parrot the exact language recommended by the Commission will not mean, without more, that he or she did not use an appropriate disclaimer. In

addition, if a school official utilizes an appropriate disclaimer, but the content or substance of the statements would still lead a reasonable member of the public to believe that the school official is speaking in his or her official capacity or pursuant to his or her official duties, then the disclaimer will be inadequate and of no force or effect, and the social media activity could violate the Act. *See I/M/O Treston*.

The Commission notes that throughout Respondent's endorsement video, she references the Board and her position on it, including but not limited to, identifying herself as a Board member while wearing a school identification badge, referring to a vote for Team 147 as "new majority for change and fiscal responsibility," and asking the voters to help her by voting for Team 147 to assist her on the Board. As such, the Commission finds there is a sufficient nexus between Respondent's video endorsement and her Board membership and, given the context of Respondent's video endorsement, a reasonable member of the public would perceive that the school official is speaking in his or her official capacity or pursuant to his or her official duties. Accordingly, the Commission must review whether Respondent violated *N.J.S.A. 18A:12-24(b)*, *N.J.S.A. 18A:12-24.1(e)* and *N.J.S.A. 18A:12-24.1(f)* when, in her capacity as a Board member, she recorded the video endorsement that was posted on the Board candidates' social media page.

With respect to *N.J.S.A. 18A:12-24(b)*, the Commission finds that by recording the video endorsement in her capacity as a Board member, Respondent used her official position to secure unwarranted privileges or advantages for herself and/or Team 147. Respondent's statement makes clear that she would benefit from the election of Team 147 because they would "assist" her on the Board, and result in a "new majority for change and fiscal responsibility." Team 147 also received unwarranted advantages from Respondent's message by receiving a public endorsement from a sitting Board member in her official capacity. As such, the Commission agrees with the ALJ that Respondent violated *N.J.S.A. 18A:12-24(b)* in Count 3.

Additionally, as to *N.J.S.A. 18A:12-24.1(e)*, Respondent's direct endorsement in her official capacity as a Board member is action beyond the scope of her duties that has the potential to compromise the Board because, as the ALJ stated, it "call[s] into question the impartiality and autonomy of the Board and its members." *Order* at 13. Therefore, the Commission concurs with the ALJ that a violation of *N.J.S.A. 18A:12-24.1(e)* has been established in Count 3.

Finally, regarding *N.J.S.A. 18A:12-24.1(f)*, Respondent recorded the video endorsement in her official capacity as a Board member on behalf of Team 147, a group of three candidates organized in support of a political cause. Additionally, Respondent used the schools and her position on the Board to acquire a benefit for herself and her friends by encouraging the election of Team 147 in her official capacity as a Board member. Accordingly, the Commission agrees with the ALJ that Respondent violated *N.J.S.A. 18A:12-24.1(f)* in Count 3.

As to Count 4, the ALJ found that Respondent was entitled to request and obtain tally sheets and tapes. While Petitioner's exceptions raise concerns about the ALJ's factual findings as to the time Respondent arrived at the polling place and the ALJ's conclusion that Respondent did not indicate that she was seeking the tally sheets and tapes on behalf the Board, the Commission

notes that the ALJ observed the witnesses and made credibility findings that the witnesses, including Respondent, provided competent and sincere testimony. Accordingly, given the ALJ's reliance on the credibility of Respondent's testimony as well as notation of the inconsistencies in the testimony of the poll workers, the Commission will not disturb the ALJ's factual findings that, based on the testimony and evidence, Petitioner did not establish that Respondent arrived at the polling site after the machines closed, or that Respondent identified herself as requesting the tally sheets and tape on behalf of the Board. Accordingly, based on those findings, the Commission finds that Respondent did not use her official position to secure an unwarranted privilege or advantage for herself or Team 147, as the evidence did not establish that she used her official position, or that her request to obtain the tally sheets and tapes was not permitted. Therefore, a violation of *N.J.S.A. 18A:12-24(b)* has not been demonstrated. Additionally, for the same reasons, the Commission finds that Respondent did not take action beyond the scope of her duties that had the potential to compromise the Board, and therefore, did not violate *N.J.S.A. 18A:12-24.1(e)*.

While the ALJ recommended a penalty of reprimand for Respondent's violations of *N.J.S.A. 18A:12-24(b)*, *N.J.S.A. 18A:12-24.1(e)* and *N.J.S.A. 18A:12-24.1(f)* in Count 3, the Commission modifies the recommended penalty of reprimand to censure. The Commission finds that Respondent's video endorsement was blatantly inappropriate and warrants a severe sanction, especially given that the Commission's stance on disclaimers is abundantly clear. Respondent spoke on behalf of a "new majority" of the Board, directly identified herself as a Board member, and even wore her school identification badge, without any sort of disclaimer that the views were not on behalf of the Board. Therefore, Respondent's statements on behalf of Team 147 and directly against two incumbent Board members, made while acknowledging her capacity as a Board member, could have compromised the Board and provided direct benefits to herself and the candidates she supported. While a Board member may make an endorsement in a private capacity with an appropriate disclaimer, Respondent's behavior in her official capacity, making a lengthy statement while referencing her Board membership multiple times, went far beyond a permitted endorsement. The Commission finds that Respondent's blatant disregard for the Commission's clear advice and recommendations regarding political endorsements and disclaimers, such as in A36-14, warrants a heightened penalty, such as a suspension. However, as Respondent is no longer a member of the Board, the Commission is constrained to recommend a penalty of censure for Respondent's blatant ethical violations.

IV. Decision

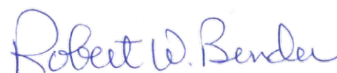
For the aforementioned reasons, the Commission adopts the ALJ's legal conclusions that Respondent violated *N.J.S.A. 18A:12-24(b)*, *N.J.S.A. 18A:12-24.1(e)* and *N.J.S.A. 18A:12-24.1(f)* in Count 3, but did not violate *N.J.S.A. 18A:12-24(b)* and/or *N.J.S.A. 18A:12-24.1(e)* in Count 4. However, the Commission modifies the recommended penalty of reprimand in favor of censure for the violations.

Pursuant to *N.J.S.A. 18A:12-29(c)*, this decision shall be forwarded to the Commissioner of Education for review of the Commission's recommended penalty. The parties may either: 1) file exceptions to the recommended sanction; 2) file an appeal of the Commission's finding of

a violation; or 3) file both exceptions to the recommended sanction together with an appeal of the finding of a violation.

Parties taking exception to the recommended sanction of the Commission but *not disputing* the Commission's finding of a violation may file, **within thirteen (13) days** from the date the Commission's decision is forwarded to the Commissioner, written exceptions regarding the recommended penalty 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," as well as to (ControversiesDisputesFilings@doe.nj.gov). A copy must also be sent to the Commission (school.ethics@doe.nj.gov) and all other parties.

Parties seeking to appeal the Commission's finding of violation *must* file an appeal pursuant to the standards set forth at *N.J.A.C. 6A:4:1 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 date of mailing to the parties, as shown below. In such cases, the Commissioner's review of the Commission's recommended sanction will be deferred and incorporated into the Commissioner's review of the finding of violation 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 briefs on appeal.



Robert W. Bender, Chairperson

Mailing Date: December 17, 2024

***Resolution Adopting Decision
in Connection with C75-19***

Whereas, at its meeting on July 21, 2020, the School Ethics Commission (Commission) voted to transmit the above-captioned matter to the Office of Administrative Law (OAL) for a hearing; and

Whereas, on February 27, 2023, the Administrative Law Judge (ALJ) issued an Order on Partial Summary Decision, finding that Respondent violated *N.J.S.A.* 18A:12-24(b), *N.J.S.A.* 18A:12-24.1(e) and *N.J.S.A.* 18A:12-24.1(f) in Count 3, but finding that summary decision was not appropriate for the allegations in Count 4; and

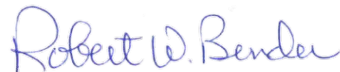
Whereas, on August 22, 2024, the ALJ issued an Initial Decision, finding that Respondent did not violate *N.J.S.A.* 18A:12-24(b) and/or *N.J.S.A.* 18A:12-24.1(e) in Count 4, and recommended that Respondent be reprimanded for the violations in Count 3; and

Whereas, Petitioner filed exceptions to the Initial Decision and Respondent filed a reply; and

Whereas, at its meeting on November 26, 2024, the Commission reviewed the record in this matter, discussed adopting the ALJ's conclusions that Respondent violated *N.J.S.A.* 18A:12-24(b), *N.J.S.A.* 18A:12-24.1(e) and *N.J.S.A.* 18A:12-24.1(f) in Count 3, but did not violate *N.J.S.A.* 18A:12-24(b) and/or *N.J.S.A.* 18A:12-24.1(e) in Count 4, and discussed modifying the recommended penalty of reprimand in favor of censure; and

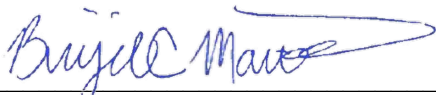
Whereas, at its meeting on December 17, 2024, the Commission reviewed and voted to approve the within decision as accurately memorializing its actions/findings from its meeting on November 26, 2024; and

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



Robert W. Bender, Chairperson

I hereby certify that this Resolution was duly adopted by the School Ethics Commission at its meeting on December 17, 2024.



Brigid C. Martens, Director
School Ethics Commission