

Before the School Ethics Commission
OAL Docket No.: EEC-13642-12, EEC-13643-12, and EEC-13644-12
SEC Docket No.: C17-12, C18-12, and C21-12
(Consolidated)

Final Decision

In the Matter of Israel Varela and Kenneth Puccio,
Perth Amboy Board of Education,
Middlesex County

I. Procedural History

This consolidated matter arises from three (3) separate but related Complaints filed with the School Ethics Commission (Commission). On April 24, 2012, Janine Walker Caffrey, then Superintendent of the Perth Amboy School District (District) filed a Complaint against Israel Varela, a member of the Perth Amboy Board of Education (Board), and alleged violations of *N.J.S.A.* 18A:12-24(a), *N.J.S.A.* 18A:12-24(b), *N.J.S.A.* 18A:12-24.1(d), *N.J.S.A.* 18A:12-24.1(e), *N.J.S.A.* 18A:12-24.1(f), *N.J.S.A.* 18A:12-24.1(h), and *N.J.S.A.* 18A:12-24.1(i). At its meeting on September 25, 2012, the Commission adopted a decision finding probable cause to credit the allegations that Respondent Varela violated *N.J.S.A.* 18A:12-24(b) (in Count 1 and Count 2), and *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(h) (in Count 1). The Commission dismissed all other allegations and voted, pursuant to *N.J.A.C.* 6A:28-10.7(c)(2), to transmit the matter docketed as **C17-12** to the Office of Administrative Law (OAL) on or about September 28, 2012.

On April 25, 2012, Alvaro Cores, then Principal of the Dr. Herbert N. Richardson Elementary School (Richardson School) in the District, also filed a Complaint against Israel Varela, and alleged violations of *N.J.S.A.* 18A:12-24(b), *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), *N.J.S.A.* 18A:12-24.1(f), *N.J.S.A.* 18A:12-24.1(g), *N.J.S.A.* 18A:12-24.1(i), and *N.J.S.A.* 18A:12-24.1(j). At its meeting on September 25, 2012, the Commission adopted a decision finding probable cause to credit the allegations that Respondent Varela violated *N.J.S.A.* 18A:12-24(b) (in Count 3); *N.J.S.A.* 18A:12-24.1(d), *N.J.S.A.* 18A:12-24.1(e), *N.J.S.A.* 18A:12-24.1(i), and *N.J.S.A.* 18A:12-24.1(j) (in Count 1, Count 2, and Count 4); and *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(i) (in Count 3). The Commission dismissed all other allegations and voted, pursuant to *N.J.A.C.* 6A:28-10.7(c)(2), to transmit the matter docketed as **C18-12** to the OAL on or about September 28, 2012.

On May 24, 2012, Dr. Caffrey filed a Complaint against Kenneth Puccio, a member of the Board, and alleged violations of *N.J.S.A.* 18A:12-24(b), *N.J.S.A.* 18A:12-24(c), *N.J.S.A.* 18A:12-24(g), *N.J.S.A.* 18A:12-24.1(d), *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(i). At its meeting on September 25, 2012, the Commission adopted a decision finding probable cause to credit the allegations that Respondent Puccio violated *N.J.S.A.* 18A:12-24(c) (in Count 1); *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(f) (in Count 1); and *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(i) (in Count 2). The Commission dismissed all other allegations and voted, pursuant to *N.J.A.C.* 6A:28-10.7(c)(2), to transmit the matter docketed as **C21-12** to the OAL on or about September 28, 2012.

At the OAL, the matters were consolidated, and hearings were conducted by Michael Antoniewicz, Administrative Law Judge (ALJ Antoniewicz), on August 7, 2015, August 14, 2015, September 11, 2015, November 12, 2015, April 30, 2016, September 1, 2017, April 6, 2018, and May 22, 2018. Following the completion of the hearings, but prior to the filing of briefs, ALJ Antoniewicz was appointed to the Superior Court. In accordance with *N.J.A.C.* 1:1-14.13, the matters were transferred to Jeff S. Masin, Administrative Law Judge (ALJ Masin) retired on recall, on October 30, 2018. After ALJ Masin was afforded time to review the transcript of the proceedings (with consent of the parties), the parties filed briefs and the record closed on December 27, 2018. ALJ Masin requested an extension to file his Initial Decision with the Commission, and same was granted until February 22, 2019.

On February 19, 2019, ALJ Masin issued his Initial Decision. After review of the record, ALJ Masin concluded that Respondent Varela violated *N.J.S.A.* 18A:12-24(b), *N.J.S.A.* 18A:12-24.1(d), and *N.J.S.A.* 18A:12-24.1(i) in connection with the visitor policy; Respondent Varela violated *N.J.S.A.* 18A:12-24.1(d), *N.J.S.A.* 18A:12-24.1(e), *N.J.S.A.* 18A:12-24.1(i), and *N.J.S.A.* 18A:12-24.1(j) in relation to the meetings with Hector Muniz; and Respondent Puccio violated *N.J.S.A.* 18A:12-24.1(d) and *N.J.S.A.* 18A:12-24.1(e) when he attended a meeting of the local American Federation of Teachers (AFT). Based on his findings of fact and legal conclusions, ALJ Masin recommended that Respondent Varela be censured, and that Respondent Puccio be suspended for sixty days or, in lieu of suspension (or of some portion thereof), Respondent Puccio be replaced as Board president by another member chosen by the county superintendent.

The Commission acknowledged receipt of ALJ Masin's Initial Decision on February 19, 2019; therefore, the forty-five (45) day statutory period for the Commission to issue a Final Decision was April 5, 2019. Prior to April 5, 2019, the Commission requested a forty-five (45) day extension of time to issue its decision so as to allow the Commission, which only meets monthly, the opportunity to receive and review the full record, including the parties' Exceptions. 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 May 20, 2019. Respondents filed Exceptions in correspondence dated March 5, 2019, and Complainant filed Exceptions in correspondence dated March 6, 2019.

The Commission considered the full record in this matter, including the Exceptions filed by the parties, at its meeting on March 26, 2019. At a special meeting on May 2, 2019, and for the reasons more fully detailed below, the Commission voted to adopt ALJ Masin's findings of fact; adopt the legal conclusion that Respondent Varela violated *N.J.S.A.* 18A:12-24(b), *N.J.S.A.* 18A:12-24.1(d), and *N.J.S.A.* 18A:12-24.1(i) in connection with the visitor policy; to adopt the legal conclusion that Respondent Varela violated *N.J.S.A.* 18A:12-24.1(d), *N.J.S.A.* 18A:12-

24.1(e), *N.J.S.A.* 18A:12-24.1(i), and *N.J.S.A.* 18A:12-24.1(j) in relation to the meetings with Mr. Muniz; and to adopt the legal conclusion that Respondent Puccio violated *N.J.S.A.* 18A:12-24.1(d) and *N.J.S.A.* 18A:12-24.1(e) when he attended a meeting of the local AFT. The Commission also voted to adopt the recommended penalty of censure for Respondent Varela, but voted to modify the recommended penalty of suspension for sixty (60) days for Respondent Puccio to suspension for one (1) year. Finally, the Commission voted to reject ALJ Masin's recommendation that, in lieu of suspension, Respondent Puccio should be removed as Board President.

II. Initial Decision

In his Initial Decision, ALJ Masin summarized the pertinent witness testimony, issued factual findings, and rendered legal conclusions as to the alleged conduct of both Respondent Varela and Respondent Puccio.

Respondent Varela

As to the “**Alleged Violations of the Visitor Policy**,” ALJ Masin noted that Mr. Cores (the Complainant in C18-12), served as the Principal of the Richardson School from September 2011 to July 2012. *Initial Decision* at 5. Mr. Cores' employment contract was not renewed by the Board after July 2012 despite Dr. Caffrey's positive evaluation of his performance, and her recommendation that he be renewed. *Id.* Among the teaching staff at the Richardson School was Anna Varela, the spouse of Respondent Varela. *Id.* Respondent Varela operated an auto body shop located near the Richardson School, and entered the Richardson School regularly. *Id.* The District and the Richardson School each had policies/procedures regarding visitors to the school. *Id.* The District Policy was issued January 12, 2006, and the definition of “visitor” includes “members of the Board.” *Id.* The District Policy requires that any “visitor” register in the school office, provides that a logbook be maintained, requires each visitor to enter his/her name and to detail the purpose of his/her visit. *Id.* The District Policy requires every “visitor” to be given an identification tag or badge, to be escorted to his/her destination (with limited exception), and to return to the school office before leaving the building. *Id.*

In September 2011, the Richardson School issued “School Visitor Procedures” (Procedures) at the request of Dr. Caffrey. *Initial Decision* at 5-6. The Procedures reflected the District's definition of “visitor,” and included Board members. *Id.* at 6. The Procedures required that visitors enter the Richardson School by the main entry doorway, and specified that “Board members must have prior superintendent approval.” *Id.* The Procedures further detailed that visitors were to be greeted by the security officer or a secretary, were to be instructed to sign in at the main office in visitor's logbook, were to note the purpose of the visit, and were to be provided with an identification tag and escorted in the building. *Id.* When the visit was complete, the visitor was to be escorted back to the main office, where he/she was to record their time out of the building. *Id.* As Principal of the Richardson School, and as reflected in his job description, one of Mr. Cores' primary job responsibilities and obligations was to safeguard the health and welfare of children and staff. *Initial Decision* at 6.

During his testimony, Respondent Varela readily admitted that he would come to the Richardson School to bring lunch to his spouse, and would also exchange keys with staff members whose cars he was repairing at his shop. *Initial Decision* at 6. Between October 2011 and April 2012, Mr. Cores compiled data showing fifteen (15) dates when Respondent Varela did sign in at the main office, and that on seven (7) of these occasions, he did not sign out as required. *Id.* at 6-7.

By its specific wording, the District's Policy, issued long before Dr. Caffrey became the Superintendent and Mr. Cores became the Principal of the Richardson School, applied to Board members visiting the school. *Initial Decision* at 14. The Procedures, which were issued while Dr. Caffrey was the Superintendent and Mr. Cores the Principal of the Richardson School, also clearly applied to "members of the Board." *Id.* Therefore, ALJ Masin found that Respondent Varela was certainly on notice that the written policies and procedures of the District and the school stated, unequivocally, that as a Board member he had the obligation when visiting the school to sign in, note the purpose of the visit, be escorted, and sign out when leaving. *Id.* Testimony from Mr. Cores, the security officer, and Respondent Varela's previous admissions and testimony demonstrate that he did not comply "with the policy *every time* he came to the Richardson School." *Id.* at 14-15 (emphasis added). ALJ Masin found that Respondent Varela came to the Richardson School for different reasons – as a husband (to visit his spouse), as a business man (to obtain or return keys to clients – i.e., District personnel), and as a Board member (to inspect conditions). *Id.* at 15.

While ALJ Masin noted that Respondent Varela's visits on some occasions were for benign reasons and presented no actual security concern, as a Board member, Respondent Varela had no right to ignore mandated security procedures. *Initial Decision* at 15. As stated by ALJ Masin, "it must not be overlooked that especially in this era, the need for compliance with such procedures is vital," and knowing "who is in the school, when and for what purpose is an altogether legitimate and substantial concern for those charged with protecting the health and safety of students entrusted to their care." *Id.* In addition, and regardless of past practice, ALJ Masin found that the credible evidence is that once Dr. Caffrey and Mr. Cores were in charge, they sought to have visitors, including Respondent Varela, comply with the visitor policies and procedures. *Id.* Nonetheless, multiple attempts, conversations, and instructions failed to obtain complete compliance from Respondent Varela. *Id.*

Based on the foregoing facts, namely Respondent Varela's repeated failure to comply with the visitor policies and procedures on multiple occasions despite multiple requests that he do so, ALJ Masin concluded that Respondent Varela violated *N.J.S.A. 18A:12-24(b)* and *N.J.S.A. 18A:12-24.1(i)* because he failed to support the school's personnel in their important task of assuring that, through the use and enforcement of written policy and procedure, they had a complete handle on what was going on in the building, who was there, when, and why. *Initial Decision* at 16. ALJ Masin further concluded that, by undermining the authority of the school's personnel charged with the day-to-day task of managing the building to assure its safety and orderly conduct, Respondent Varela violated *N.J.S.A. 18A:12-24.1(d)*. *Id.* However, ALJ Masin dismissed the alleged violation of *N.J.S.A. 18A:12-24.1(e)* because "there is no evidence that appears to support this charge in relation to the visitor policy." *Id.*

Regarding his “**Alleged Interference in the Hiring Process**,” ALJ Masin noted that, in the fall of 2011, there was an opening for “a couple of bus driver positions.” *Initial Decision* at 18. Two of the applicants were Eddie Suriel and Beverly Williams. *Id.* After going through the process, Dr. Caffrey recommended that Ms. Williams be hired. *Id.* When Mr. Suriel learned that he had not been hired, he spoke with Dr. Caffrey to express his unhappiness with not being recommended for the position. *Id.* According to Dr. Caffrey, Mr. Suriel stated, “I know how this works. I’ll get a Board member to tell you to hire me.” *Id.*

Although the Board was scheduled to vote on the appointment of Ms. Williams at a Board meeting in December 2011, Respondent Varela and another former Board member (Samuel Lebreault (Lebreault)) expressed concerns about the appointment and indicated that they did not feel Ms. Williams was the best candidate. *Initial Decision* at 18-19. Despite Dr. Caffrey’s insistence that Ms. Williams was the best candidate, the recommendation to appoint her (Ms. Williams) was tabled on a motion made by Respondent Varela, and seconded by Respondent Puccio. *Id.* at 19. Ultimately, Ms. Williams was hired at a Board meeting in early 2012, and Mr. Suriel was also hired in the spring or summer of 2012. *Id.*

The allegation is that Respondent Varela voted to table the appointment of Ms. Williams “specifically” to favor another candidate, namely Mr. Suriel. *Initial Decision* at 20. However, based on the facts, ALJ Masin found that the record does not support a finding that Respondent Varela’s conduct regarding the vote to table the recommended hiring of Ms. Williams violated *N.J.S.A.* 18A:12-24(b), *N.J.S.A.* 18A:12-24.1(e), or *N.J.S.A.* 18A:12-24.1(h). *Id.* at 20-22. In reaching this decision, ALJ Masin noted that there “is no inherent problem with a board member questioning a hiring recommendation made by the administrative officer,” and it is “certainly within a board member’s rights and responsibility to request additional information before voting on such a recommendation.” *Id.* at 21. Notwithstanding this right, it must be done for legitimate, and not nefarious reasons. *Id.* In this regard, ALJ Masin noted that there is absolutely no evidence to demonstrate that Mr. Suriel ever acted on his “threat” by actually speaking to or otherwise communicating with any Board member and, more specifically, with Respondent Varela. *Id.* at 22. As a result, Dr. Caffrey “could do no more than speculate as to the alleged discriminatory character of [Respondent] Varela’s conduct, and speculation is not evidence and is not a basis for finding that the motivation was illegitimate.” *Id.* Therefore, the charges regarding the vote to table the recommended hiring of Ms. Williams are dismissed. *Id.*

By way of background for the “**Alleged Improper Interference Relating to the Meetings with Mr. Muniz**,” ALJ Masin noted that several employees at the Richardson School received Summative Memorandums in April 2012 for an unrelated incident. *Initial Decision* at 22. Following the issuance of these Memorandums, another unrelated incident - the sale of coquito in December 2011 - resurfaced. *Id.* It is alleged that Respondent Varela, acting alone and without Board permission, sought to encourage Mr. Muniz, a secretary at the Richardson School, to make a statement that employees, including himself (Mr. Muniz) and another secretary (Susan Nieves), were being blackmailed by Mr. Cores and Karen Moffatt, the Vice Principal of the Richardson School, “in order to keep the coquito incident hidden.” *Id.* at 22-23.

As for the facts related to these allegations, both Mr. Muniz and Respondent Varela agree that they met and had a conversation – outside their respective homes - on April 21, 2012, and

April 22, 2012. *Initial Decision* at 33. The two men also agree that the conversation involved comments about cooperating with the Board. *Id.* Respondent Varela agrees that before April 21, 2012, he already knew about the coquito incident, and also acknowledges he knew, based on conversations with his spouse, about Ms. Nieves' complaints about blackmail. *Id.* At the time that these conversations occurred, Respondent Varela was certainly not well disposed towards either the superintendent or the principal of Richardson School. *Id.* It would not be at all surprising if Respondent Varela saw an opportunity to obtain evidence of wrongdoing on the part of these persons from an alleged victim of the blackmail. *Id.* Respondent Varela's own description of Mr. Muniz as a very young, scared, "ignorant" kid lends credence to the prospect that he, as an older person, known to Mr. Muniz for years, and an authority figure with a prominent position in the very district employing him, would attempt to convince Mr. Muniz to come forward with damaging information against Mr. Cores and Dr. Caffrey, while also seeking to induce such cooperation with talk of trust, caring and security for the cooperating witness. *Id.*

Whether Mr. Muniz actually heard the word "protection" about his job, or merely understood all the talk about not hurting people and trust, coming from a neighbor and Board member, as meaning that his job position would not suffer, ALJ Masin found that Respondent Varela, a Board member who was not charged with the day-to-day supervision of the District and its personnel, essentially became an investigator, trying to induce an individual to provide damaging evidence against persons towards whom he had clear, work-related animus. *Initial Decision* at 33-34. Although acknowledging that Mr. Muniz's credibility is not without flaw, ALJ Masin found that the preponderance of the evidence is that Mr. Muniz's version of the events, including that Respondent Varela spoke specifically about "blackmail," is the more convincing account. *Id.* at 34.

According to ALJ Masin, it is clear that it was not Respondent Varela's job as a Board member to take it upon himself to conduct an unauthorized, private investigation of personnel, nor to even suggest to a potential witness how the Board would treat him or his job situation. *Initial Decision* at 34. Thus, even under Respondent Varela's "benign" version of the conversations, he overstepped his boundaries. *Id.* According to ALJ Masin, he should have, at most, assured Mr. Muniz that he would discuss the allegations of blackmail and of other possible improper activity by senior administrators with the Board attorney so that properly authorized and legally appropriate decisions could be made on how to proceed to determine if any wrongdoing had occurred. *Id.* Beyond that he should have avoided further discussion, promises, inducements, encouragements and the like. *Id.*

Because Respondent Varela became involved in the day-to-day functions and responsibilities of school personnel, conducted a private, unauthorized investigation, made promises, and sought, without authorization, to obtain information in a private setting with purpose to undermine school personnel, ALJ Masin determined that Respondent Varela violated *N.J.S.A.* 18A:12-24.1(d), *N.J.S.A.* 18A:12-24.1(e), *N.J.S.A.* 18A:12-24.1(i), and *N.J.S.A.* 18A:12-24.1(j). *Initial Decision* at 34.

As a result of the legal conclusions reached regarding Respondent Varela's conduct (in Sections A, B, and C *infra*), and while noting that Respondent Varela is no longer a member of the Board, ALJ Masin recommended the penalty of censure. *Initial Decision* at 35.

Respondent Puccio

As for the “**February 22, 2012, Meeting**,” Respondent Puccio addressed Dr. Caffrey after the conclusion of a Board personnel committee meeting, and mentioned his concern that two administrators - Dr. Morgan and Dr. Garcia - had approached his superior officer about his presence in their schools. *Initial Decision* at 39. Respondent Puccio and Dr. Caffrey differ over the intensity of Respondent Puccio’s remarks, and their content. *Id.* Dr. Caffrey described him as irate, red in the face and screaming, claiming that he would “get” them, “if it’s the last thing I do” and that it was “personal.” *Id.* Respondent Puccio denies that he was so intense, denies that he demanded that they be fired, and denies that he wanted Dr. Caffrey to discipline them. *Id.* Both Dr. Caffrey and Respondent Puccio agree that following this event, shortly thereafter, whatever problem might have existed involving the principals and Respondent Puccio was worked out satisfactorily. *Id.*

As for the others alleged to have been present during the post-meeting encounter, the Board attorney denied any recollection of such an intense encounter, and noted that had one erupted, she would have stopped it. *Initial Decision* at 39. As to Respondent Puccio’s suggestion that the principals’ raising of the issue of confusion as to his role when in their schools to his police superior was an attempt to undermine him in regard to negotiations, there is no evidence in the record to support that supposition. *Id.* at 39-40.

The crux of this allegation is that Respondent Puccio’s conduct was done to further his personal interest or perhaps to obtain a benefit for himself. *Initial Decision* at 40. However, ALJ Masin was “not convinced by a preponderance of the credible evidence that [Respondent] Puccio’s conduct after the meeting was as intense and threatening as [Dr.] Caffrey claimed.” *Id.* Although ALJ Masin acknowledges that Respondent Puccio was unhappy that the principals spoke to his superior rather than bring their concern to the attention of Dr. Caffrey, it was not out of line for Respondent Puccio to raise the issue of their action with Dr. Caffrey. *Id.* While it is possible, and even likely, that Respondent Puccio spoke loudly, ALJ Masin credits testimony from the Board attorney that if Respondent Puccio had been as forceful as claimed, she (the Board attorney) would have calmed the situation and, moreover, remembered it. *Id.*

Finding nothing improper in Respondent Puccio telling Dr. Caffrey that the principals appeared to have acted out of step with the proper procedure, ALJ Masin found that while Respondent Puccio was no doubt upset, he did not “threaten” to get them, or “demand” they be fired or disciplined. *Initial Decision* at 40. Therefore, ALJ Masin dismissed the charges related to the February 22, 2012, post-meeting encounter, namely the alleged violations of *N.J.S.A.* 18A:12-24(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(f). *Id.*

Regarding his “**Attendance at the AFT Meeting**,” Respondent Puccio, along with Lebreault (then Vice President), attended a local AFT meeting on May 9, 2012, which was after the Board suspended Dr. Caffrey, and the Commissioner of Education (Commissioner) ordered

her reinstatement to the position because of a flaw in the Board's voting process. *Initial Decision* at 40-41. It is alleged that, at this meeting, Respondent Puccio assisted the local AFT President in obtaining a vote of "no confidence" in Dr. Caffrey from those (members of the association) who attended the meeting. *Id.* at 40.

Donna Chiera, the President of the local AFT as of May 9, 2012, testified that after Dr. Caffrey was reinstated by the Commissioner, it was decided that a meeting with the local AFT building representatives and officers would be scheduled. *Initial Decision* at 41. According to Ms. Chiera, only the building representatives received notice of the meeting. *Id.* Ms. Chiera testified that a Board member (Obdulia Gonzalez) contacted her and asked if Board members could attend the meeting, and the Board member was advised, after Ms. Chiera consulted with counsel, that Board members could talk to the group only after the business meeting ended. *Id.* Ms. Chiera also recommended to Gonzalez that she (Gonzalez) should check with the Board's attorney about whether attendance by Board members was permissible. *Id.* Ms. Chiera testified that, while at the meeting, Respondent Puccio expressed how committed he was to the District, and stated, he "was out there fighting for us. People were saying this was personal. Well, this was personal for him. I have skin in the game." *Id.* at 42.

Respondent Puccio testified that he thought the AFT had reached out to the Board, indicated that Lebreault told him (Respondent Puccio) that the Union had concerns it wanted to "air out," stated that Lebreault told him (Respondent Puccio) that the Board attorney had said they could attend the AFT meeting, testified that the majority of the Board wanted him and Lebreault to attend the meeting, but confirmed that "there was no official Board action to authorize attendance at the meeting." *Initial Decision* at 42.

In his discussion, ALJ Masin noted that Respondent Puccio admitted he attended the emergency local AFT meeting which was called, according to its then president, for the purpose of discussing the ongoing concerns of the members, or at least the leadership of the AFT, about Dr. Caffrey. *Initial Decision* at 44. The emergency local AFT meeting was called in the wake of Dr. Caffrey's suspension by the Board and reinstatement by the Commissioner, and there is no question that the AFT had significant issues with Dr. Caffrey's leadership. *Id.* It was also obvious that the Board, or at least its majority, had significant problems with Dr. Caffrey's leadership. *Id.* With this as the background for the meeting, ALJ Masin stated, "it is impossible not to recognize that [Respondent] Puccio, as well as Lebreault, knew exactly what that situation was when they chose to attend the meeting." *Id.*

In discussing the facts, ALJ Masin found it significant that no formal Board action had been proffered approving of their attendance, and found it even more significant that the Board attorney did not offer that she had been consulted by Lebreault or had indeed approved Respondent Puccio's and Lebreault's attendance at the emergency local AFT meeting. *Id.* at 44-45. As such, ALJ Masin found that there is no credible or competent evidence to support any claim that the Board or the Board's attorney had in fact authorized attendance. *Id.* In addition, Respondent Puccio met with the AFT leadership without any notice whatsoever to Dr. Caffrey, who at that time had been reinstated and was thus the person responsible for the day-to-day operation of the schools and the day-to-day interaction with the AFT and its members. *Id.* ALJ Masin also found that there is no evidence that, after the meeting, Respondent Puccio shared

with Dr. Caffrey what he said at the meeting, or shared any other information or conversation that might have taken place regarding his/her employment. *Id.* In effect, ALJ Masin found that Respondent Puccio, and also Lebreault, took it upon themselves to become involved in the administration of the schools. *Id.*

Although Respondent Puccio attempted to couch his actions as a benign attempt to display support for the teachers, “it was not appropriate for board members to meet privately with Union leadership in what could only be seen, given that context and the positions taken by [Respondent] Puccio and Lebreault in support of suspension, as a show of support for the Union and its own goals, opposed as they were to [Dr. Caffrey].” *Initial Decision* at 45. As such, ALJ Masin found that this was conduct beyond the scope of Respondent Puccio’s duties as a Board member which had the potential to undermine Dr. Caffrey’s authority as Superintendent - a position she held at the time of the meeting and, as far as anyone then knew, might continue to hold for some time. *Id.* ALJ Masin further found that Respondent Puccio attended the AFT meeting without any formal Board approval; without, based on the record, any proven informal consent; without informing Dr. Caffrey; and without any actual knowledge that the rest of the Board or its counsel had knowledge of his attendance. *Id.* at 46. ALJ Masin concluded that by facilitating this informal contact through an unauthorized, private meeting, Respondent Puccio failed to carry out his responsibility not to administer the schools and to work with his fellow Board members to see that the schools are well run. *Id.* ALJ Masin further concluded that Respondent Puccio acted beyond the scope of his duties in a manner that had the potential to compromise the Board, and that he involved himself in the day-to-day administration of the schools by placing himself in a compromising situation/position between the AFT (the local Union) and Dr. Caffrey (the Superintendent). *Id.* As such, ALJ Masin found that Respondent Puccio violated *N.J.S.A.18A:12-24.1(d)* and *N.J.S.A.18A:12-24.1(e)*. *Id.*

In light of the legal conclusions as set forth above, ALJ Masin agreed that “the circumstances involved, with the violations involving the Board member effectively providing the Union with support for its, and his, goal of ousting the superintendent, would warrant serious sanction,” he also noted that the events occurred “nearly seven years ago” and, since that time, Respondent Puccio’s service as a Board member has been characterized as exemplary. *Initial Decision* at 47. Therefore, ALJ Masin recommended a suspension of sixty (60) days, but in lieu of suspension, or of some portion thereof, ALJ Masin recommended that Respondent Puccio be replaced as Board President by another member of the Board that is chosen by the county superintendent. *Id.*

III. Exceptions

In their Exceptions, **Respondents** agree that ALJ Masin correctly analyzes the lack of first-hand personal knowledge and utter speculation on the part of the party’s witnesses against Respondent Varela and Respondent Puccio. ALJ Masin indicated that “speculation is not evidence and is not a basis for finding that the [action] was illegitimate.” However, Respondents argue that ALJ Masin relied upon that same speculative testimony when finding that Respondent Varela failed to sign in or out on occasion, regarding Respondent Varela’s meeting with Mr. Muniz and when Respondent Puccio attended the AFT meeting. In this regard, the ALJ’s determination should likewise be dismissed. Furthermore, the penalty of a sixty (60) day

suspension for Respondent Puccio is unwarranted and Respondents contend that a reprimand or censure would be sufficient.

Respondents argue that there is no evidence that during his visits to the school, Respondent Varela gave staff any direct orders or became directly involved in the day-to-day activities of the school; therefore, a violation of *N.J.S.A.* 18A:12-24.1(d) (C18-12 Count 3) should be dismissed. Furthermore, Respondent Varela's failure to sign out on occasion was not found to be direct, confrontational or intimidating and, therefore, not a violation of *N.J.S.A.* 18A:12-24.1(i) (C18-12 Count 3) and should similarly be dismissed. Regarding Respondent Varela's meeting with Mr. Muniz, Respondent Varela did not make a personal promise to Mr. Muniz nor did he take personal action that could be considered undermining and the Commission failed to meet its burden of proof that the conversation between the two rose to the level of a violation of the Code (C18-12 Counts 1 and 2).

Regarding Respondent Puccio, Respondents argue that the ALJ's reliance on Gartland is misplaced and the recommended penalty is not consistent with other Commission decisions where a board member was found to have violated *N.J.S.A.* 18A:12-24.1(e). Respondents contend suspension cases generally involve more than taking action beyond the scope of authority, as was found with Respondent Puccio and, therefore, Respondent Puccio's conduct should be reduced to a reprimand or censure.

Respondent Varela and Respondent Puccio request that all claims against them be dismissed with prejudice because the Commission has failed to meet its burden of proof demonstrating that either Respondent has violated the Act as alleged.

In general, **Complainant** (the Commission) agrees with ALJ Masin's decision that Respondent Varela should be censured and Respondent Puccio should receive a sixty (60) day suspension. More specifically, regarding Respondent Puccio, Petitioner agrees that his actions "warrant serious sanction" because his intent to undermine the superintendent was explicit, and, therefore, recommended suspension, as a minimum sanction, but noted removal would be more appropriate. However, ALJ Masin recommended a sixty (60) day suspension and then suggested that in lieu of that, the Commissioner should consider demoting Respondent Puccio from his role as Board President, which raises two concerns: the duration of the suspension and the appropriateness of removing Respondent Puccio as Board President. Respondent Puccio's actions as stated above, had the intent to undermine the superintendent's authority which would have impacted her ability to properly administer the district. Therefore, the Commission should reconsider the ALJ's penalty against Respondent Puccio, and due to the severity of his actions removal from the Board would be a more appropriate sanction. Regarding the ALJ's recommendation that Respondent Puccio be demoted from his position as Board President, the Commission does not have the authority to order such a sanction. The Commission's authority is limited to the reprimand, censure, suspension or removal of a board member and, therefore, the ALJ's recommendation of a demotion should be rejected.

Finally, the evidence in the record was sufficient to support a finding that Respondent Varela inappropriately interfered with the hiring of a candidate and Dr. Caffrey's testimony was sufficient to support a finding that Respondent Puccio threatened job action against two

principals for questioning his purpose in entering their schools. Despite ALJ Masin's finding that Petitioner did not prove these claims and dismissing them, Petitioner requests that the ALJ's dismissal of these claims be reversed.

IV. Analysis

Upon careful and independent review of the extensive facts and evidence set forth in the record, the Commission adopts ALJ Masin's findings of fact with regard to the actions/conduct of both Respondent Varela and Respondent Puccio, as well as the legal conclusions set forth in the Initial Decision. More specifically, and regarding Respondent Varela, the Commission adopts the legal conclusion that, with regard to the "Alleged Violations of the Visitor Policy," Respondent Varela violated *N.J.S.A.* 18A:12-24(b) and *N.J.S.A.* 18A:12-24.1(i) because he failed to support the school's personnel in their important task of assuring that, through the use and enforcement of written policy and procedure, they had a complete handle on what was going on in the building, who was there, when, and why, and also violated *N.J.S.A.* 18A:12-24.1(d) because he undermined the authority of the school personnel charged with the day-to-day task of managing the building to assure its safety and orderly conduct; and adopts the legal conclusion that, regarding the "Alleged Improper Interference Relating to the Meetings with Mr. Muniz," Respondent Varela violated *N.J.S.A.* 18A:12-24.1(d), *N.J.S.A.* 18A:12-24.1(e), *N.J.S.A.* 18A:12-24.1(i), and *N.J.S.A.* 18A:12-24.1(j) because he became involved in the day-to-day functions and responsibilities of school personnel, conducted a private, unauthorized investigation, made promises, and sought, without authorization, to obtain information in a private setting with the purpose to undermine school personnel.

The Commission additionally adopts the legal conclusion that, with respect to Respondent Varela's "Alleged Violations of the Visitor Policy," there was *insufficient* evidence to establish that he (Respondent Varela) violated *N.J.S.A.* 18A:12-24.1(e); and adopts the legal conclusion that, with regard to Respondent Varela's "Alleged Interference in the Hiring Process" of Ms. Williams, there was *insufficient* evidence to establish that he (Respondent Varela) violated *N.J.S.A.* 18A:12-24(b), *N.J.S.A.* 18A:12-24.1(e), or *N.J.S.A.* 18A:12-24.1(h).

As for Respondent Puccio, the Commission adopts the legal conclusion that, with regard to his "Attendance at the AFT Meeting," Respondent Puccio violated *N.J.S.A.* 18A:12-24.1(d) and *N.J.S.A.* 18A:12-24.1(e) because, by attending an emergency local AFT meeting without authorization from the Board, the Board's attorney, and without the knowledge of the Superintendent, he (Respondent Puccio) engaged in conduct beyond the scope of his duties as a Board member which had the potential to undermine Dr. Caffrey's authority as Superintendent, and failed to carry out his responsibility not to administer the schools and to work with his fellow Board members to see that the schools are well run. The Commission also adopts the legal conclusion that, regarding the "February 22, 2012, Meeting," there was insufficient evidence to establish that he (Respondent Puccio) violated *N.J.S.A.* 18A:12-24(c), *N.J.S.A.* 18A:12-24.1(d), *N.J.S.A.* 18A:12-24.1(e), or *N.J.S.A.* 18A:12-24.1(f).

V. Decision

The Commission determines to adopt the ALJ Masin’s Initial Decision finding that Respondent Varela violated *N.J.S.A.* 18A:12-24(b), *N.J.S.A.* 18A:12-24.1(d), and *N.J.S.A.* 18A:12-24.1(i) in connection with the visitor policy; Respondent Varela violated *N.J.S.A.* 18A:12-24.1(d), *N.J.S.A.* 18A:12-24.1(e), *N.J.S.A.* 18A:12-24.1(i), and *N.J.S.A.* 18A:12-24.1(j) in relation to the meetings with Mr. Muniz; and Respondent Puccio violated *N.J.S.A.* 18A:12-24.1(d) and *N.J.S.A.* 18A:12-24.1(e) when he attended the local AFT meeting.

VI. Penalty

Based upon the conclusion that Respondent Varela violated *N.J.S.A.* 18A:12-24(b), *N.J.S.A.* 18A:12-24.1(d), and *N.J.S.A.* 18A:12-24.1(i) in connection with the visitor policy, and violated *N.J.S.A.* 18A:12-24.1(d), *N.J.S.A.* 18A:12-24.1(e), *N.J.S.A.* 18A:12-24.1(i), and *N.J.S.A.* 18A:12-24.1(j) in relation to the meetings with Mr. Muniz, and *only* because he is no longer a member of the Board, the Commission **concurs** with ALJ Masin that **censure** is the appropriate penalty. If Respondent Varela was still a member of the Board, and because on his flagrant (and repeated) disregard of the ethics rules governing his behavior, the Commission would have recommended a far greater penalty.

Regarding Respondent Puccio, and based upon the conclusion that he violated *N.J.S.A.* 18A:12-24.1(d) and *N.J.S.A.* 18A:12-24.1(e) when he attended the local AFT meeting, ALJ Masin recommended “a suspension of sixty days...but in lieu of suspension, or of some portion thereof...[Respondent] Puccio be replaced as Board president by another member chosen by the county superintendent.” *Initial Decision* at 47. As an initial matter, the Commission notes that, pursuant to *N.J.S.A.* 18A:12-29(c), it may, following the finding of a violation of the Act, recommend to the Commissioner the “reprimand, censure, suspension, or removal of the school official found to have violated this act, or in the case of a board member, this act or the code of ethics.” Based on its statutory authority for recommending an appropriate penalty to the Commissioner, the Commission does not have the authority, as recommended by ALJ Masin, to remove Respondent Puccio as President of the Board. As such, the Commission **rejects** this recommended penalty.

Although the Commission does not have the authority to unseat Respondent Puccio as Board President, it concurs with ALJ Masin that suspension is the appropriate penalty. However, the Commission **modifies** the recommended duration of suspension from sixty (60) days to **one (1) year**, because it does not believe that sixty (60) days is of sufficient duration to impress upon Respondent Puccio the seriousness of his violations.

As noted by Complainant, in an analogous case, *I/M/O Colleen Gartland and Carmine Picardo, West Essex Board of Education, C44-05 (March 28, 2006) (I/M/O Gartland and Picardo)*, the Commission recommended a one (1) month suspension for a seasoned Board member (Respondent Gartland) when she, along with another less-experienced Board member (Respondent Picardo), met with the local union – at the Union’s invitation – to discuss enhancing educational opportunities in the school district. Based on its determination that Respondent Gartland and Respondent Picardo violated *N.J.S.A.* 18A:12-24.1(c) and *N.J.S.A.* 18A:12-24.1(d), the Commission recommended a one (1) month suspension for Respondent Gartland, and a

censure for Respondent Picardo. The Commissioner concurred with the Commission's recommended penalties.

Unlike in *I/M/O Gartland and Picardo*, Respondent Puccio was not invited by the local AFT to attend its meeting, and Respondent Puccio did not discuss (generally) how to enhance or improve educational opportunities in the District. Instead, Respondent Puccio and then Board Vice-President (Lebreault) invited themselves to the emergency local AFT meeting in order to specifically discuss the employment of Dr. Caffrey, and did so without her knowledge. *Initial Decision* at 43-45. At the time that Respondent Puccio and Lebreault made this conscious decision, the majority of the Board also had "significant problems" with Dr. Caffrey's leadership. *Initial Decision* at 44. As noted by ALJ Masin, "it is impossible not to recognize that [Respondent Puccio], as well as Lebreault, knew exactly what that situation was when they chose to attend the [AFT] meeting." *Initial Decision* at 44. After this meeting occurred, Respondent Puccio also failed to share with Dr. Caffrey what he said at the meeting, or what others said about her or her employment. *Initial Decision* at 45.

Furthermore, and despite Respondent Puccio's representations, there was no evidence presented which established that the other members of the Board had approved of his (and Lebreault's) attendance at the local AFT meeting, and also no testimony from the Board's attorney that she had, as claimed, been consulted by Lebreault about his and Respondent Puccio's attendance at the local AFT meeting, and/or that she had approved of their attendance at the meeting. *Initial Decision* at 45. As stated by ALJ Masin, "there is no credible or competent evidence to support any claim that the Board or the Board's attorney had in fact authorized attendance." *Initial Decision* at 45.

In essence, Respondent Puccio's attendance at the local AFT meeting was far more than benign, and he consciously inserted himself into a hostile and volatile situation that involved the employment of Dr. Caffrey. While in this meeting, without Board or attorney authorization or approval, the record supports the finding that he was more than a passive listener. At the time Respondent Puccio attended this meeting, Dr. Caffrey was, without equivocation, serving in this capacity. *Initial Decision* at 45-46. ALJ Masin most aptly characterized Respondent Puccio and Lebreault's actions as, "lone wolf intruders in between the teaching staff and the chief administrator." *Initial Decision* at 46.

The Commission finds another matter, *I/M/O Julia Hankerson, Woodbine Board of Education, C36-02 (June 24, 2003) (I/M/O Hankerson)*, to be of some import to its recommended penalty in this case. In *I/M/O Hankerson*, the Commission found that Respondent violated (1) *N.J.S.A. 18A:12-24.1(h)* when she ignored the recommendation of the superintendent and allowed a business administrator to be hired without any recommendation; (2) *N.J.S.A. 18A:12-24.1(c)* when she gave orders to a District employee to perform tasks for her; (3) *N.J.S.A. 18A:12-24.1(c)* when she had Rice notices sent to employees proposing the termination of two employees without consulting the superintendent; (4) *N.J.S.A. 18A:12-24.1(h)* when she hired a technology specialist contrary to the superintendent's recommendation; (5) *N.J.S.A. 18A:12-24.1(c)* when she created the position of Behavior Specialist and had a candidate appointed to the position without recommendation from the superintendent; (6) *N.J.S.A. 18A:12-24.1(d)* when she interviewed and hired a teacher and a nurse for the 2002-03

school year without the superintendent's recommendation; (7) *N.J.S.A.* 18A:12-24.1(e) when she removed the superintendent from the agenda of the teacher in-service orientation and directed him to conduct interviews; and (8) *N.J.S.A.* 18A:12-24.1(g) when she advised the President of the WEA and an administrator that the contract of the superintendent would not be renewed. *I/M/O Hankerson* at 15. Based on the multitude of violations committed by Respondent Hankerson, the Commission stated:

...the Commission...recommends that the Commissioner...impose a penalty of removal from her position as a Board member for these violations. The Commission finds that [Respondent] Hankerson continued to act in blatant disregard of the Code...even after she had been trained as to its provisions.... [Respondent] Hankerson's submission of false revised minutes...undermined her credibility. Further, the Commission heard testimony that the positions of employees who testified against her in the first hearing...were terminated.... Because the Commission finds [Respondent] Hankerson's conduct to be so egregious, if the Commission had the authority to do so, it would further recommend that [Respondent] Hankerson be barred from holding a position on a school board in the future.

I/M/O Hankerson at 16.

Because the Commission finds that Respondent Puccio's actions were far more egregious than those in *I/M/O Gartland and Picardo*, but not as egregious as those in *I/M/O Hankerson*, the Commission recommends suspension for **one (1) year**. Although Respondent Puccio did not commit the series of violations committed by the Respondent in *I/M/O Hankerson*, the timing of his unsanctioned attendance at the local AFT meeting was a flagrant violation of the Code, and must receive serious sanction. The importance of the relationship between the Superintendent and teaching staff members, as well as the relationship between the Board and the Superintendent, cannot be overstated. As a result, there is never an appropriate time for a member of the Board to unilaterally align himself (in his capacity as a Board member) with the local education association in a conscious and deliberate effort to undermine the authority and employment of the Superintendent. If the Board, as the Superintendent's employer, feels that a Superintendent is no longer effective in his or her position, there are mechanisms in place to address these issues.

Pursuant to *N.J.S.A.* 18A:12-29(c), this decision shall be forwarded to the 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 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.

Robert W. Bender, Chairperson
School Ethics Commission

Mailing Date: May 3, 2019

**Resolution Adopting Decision
In Connection With C17-12, C18-12, and C21-12 (Consolidated)**

Whereas, pursuant to *N.J.A.C.* 6A:28-10.7(b), the School Ethics Commission (Commission) voted to separately transmit the above matters to the Office of Administrative Law (OAL) for plenary hearings; and

Whereas, while at the OAL, the above matters were consolidated; and

Whereas, Jeff S. Masin, Administrative Law Judge (ALJ Masin), issued his Initial Decision on February 19, 2019; and

Whereas, the issuance of ALJ Masin's Initial Decision followed multiple days of hearings and the submission of post hearing filings by the parties; and

Whereas, and for the reasons set forth in his Initial Decision, ALJ Masin found that Respondent Varela violated *N.J.S.A.* 18A:12-24(b), *N.J.S.A.* 18A:12-24.1(d), and *N.J.S.A.* 18A:12-24.1(i) in connection with the visitor policy; Respondent Varela violated *N.J.S.A.* 18A:12-24.1(d), *N.J.S.A.* 18A:12-24.1(e), *N.J.S.A.* 18A:12-24.1(i), and *N.J.S.A.* 18A:12-24.1(j) in relation to the meetings with Mr. Muniz; and Respondent Puccio violated *N.J.S.A.* 18A:12-24.1(d) and *N.J.S.A.* 18A:12-24.1(e) when he attended a meeting of the local American Federation of Teachers (AFT); and

Whereas, based on his findings of fact and legal conclusions, ALJ Masin recommended that Respondent Varela be censured, and that Respondent Puccio be suspended for sixty days or, in lieu of suspension (or of some portion thereof), Respondent Puccio be replaced as Board president by another member chosen by the county superintendent; and

Whereas, the Commission received an extension to file its Final Decision until May 20, 2019; and

Whereas, by correspondence dated March 5, 2019, Respondents filed Exceptions to ALJ Masin's Initial Decision; and

Whereas, by correspondence dated March 6, 2019, Complainant filed Exceptions to ALJ Masin's Initial Decision; and

Whereas, at its meeting on March 26, 2019, the Commission reviewed and discussed the record, including the Initial Decision, Respondents' Exceptions, and Complainant's Exceptions, and

Whereas, at its meeting on March 26, 2019, the Commission discussed adopting the findings of fact from the Initial Decision; adopting the legal conclusion that Respondent Varela violated *N.J.S.A.* 18A:12-24(b), *N.J.S.A.* 18A:12-24.1(d), and *N.J.S.A.* 18A:12-24.1(i) in connection with the visitor policy; adopting the legal conclusion that Respondent Varela violated *N.J.S.A.* 18A:12-24.1(d), *N.J.S.A.* 18A:12-24.1(e), *N.J.S.A.* 18A:12-24.1(i), and *N.J.S.A.* 18A:12-

24.1(j) in relation to the meetings with Mr. Muniz; and adopting the legal conclusion that Respondent Puccio violated *N.J.S.A.* 18A:12-24.1(d) and *N.J.S.A.* 18A:12-24.1(e) when he attended the local AFT meeting; adopting the recommended penalty of censure for Respondent Varela; and rejecting the recommended penalty of removing Respondent Puccio from his position as Board President; modifying the recommended penalty of suspension for sixty (60) days for Respondent Puccio to suspension for one (1) year; and rejecting the recommendation that, in lieu of suspension, Respondent Puccio should be removed as Board President; and

Whereas, at a special meeting on May 2, 2019, the Commission reviewed and voted to approve the within decision as accurately memorializing its actions/findings from March 26, 2019; and

Now Therefore Be It Resolved, the Commission hereby adopts the within decision as a Final Decision and directs its staff to notify all parties to this action of its decision herein.

Robert W. Bender, Chairperson

I hereby certify that this Resolution was duly adopted by the School Ethics Commission at a special meeting on May 2, 2019.

Kathryn A. Whalen, Director
School Ethics Commission