

***Before the School Ethics Commission  
OAL Docket No.: EEC-01743-18  
School Ethics Commission Docket No.: C70-17***

***Final Decision (On Remand)***

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**Debra Kwapniewski,  
Complainant**

v.

**Ryan Curioni,  
Lodi Board of Education, Bergen County,  
Respondent**

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**I. Procedural History**

This matter arises from a Complaint that was filed on July 27, 2017, by Debra Kwapniewski (Complainant), alleging that Ryan Curioni (Respondent Curioni) and Alfonso Mastrofilipo (Respondent Mastrofilipo), both members of the Lodi Board of Education (Board), violated the School Ethics Act (Act), *N.J.S.A.* 18A:12-21 *et seq.* More specifically, the Complaint alleges Respondent Curioni violated *N.J.S.A.* 18A:12-24.1(a), *N.J.S.A.* 18A:12-24.1(c), *N.J.S.A.* 18A:12-24.1(d), *N.J.S.A.* 18A:12-24.1(e), *N.J.S.A.* 18A:12-24.1(g), *N.J.S.A.* 18A:12-24.1(i) in Count 1, and Respondent Mastrofilipo violated *N.J.S.A.* 18A:12-24.1(f) in Count 2.

At its meeting on November 28, 2017, and after considering the Complaint, Respondent Mastrofilipo's Motion to Dismiss, and Complainant's response to the Motion to Dismiss, the Commission adopted a decision granting the Motion to Dismiss. As a result of the Commission's decision, Respondent Mastrofilipo was dismissed from the above-referenced matter, and no longer considered a named Respondent.

Also at its meeting on November 28, 2017, and as to the allegations regarding Respondent Curioni, the Commission voted to find the Complaint not frivolous and, pursuant to *N.J.A.C.* 6A:28-10.8(a), to transmit the allegations in Count 1 to the Office of Administrative Law (OAL) for a plenary hearing where Complainant would carry the burden to prove the alleged violations of *N.J.S.A.* 18A:12-24.1(a), *N.J.S.A.* 18A:12-24.1(c), *N.J.S.A.* 18A:12-24.1(d), *N.J.S.A.* 18A:12-24.1(e), *N.J.S.A.* 18A:12-24.1(g), *N.J.S.A.* 18A:12-24.1(i). Of note, the Commission did *not* find probable cause for the allegations set forth in the Complaint, but, instead, simply voted to transmit the matter to the OAL. Complainant and Respondent Curioni were advised of the Commission's decision in a letter decision dated December 1, 2017.

After the matter was transmitted to the OAL, Complainant moved for summary decision, seeking an order finding that Respondent violated the Act and imposing an appropriate penalty. *Initial Decision (On Remand)* at 2. On September 20, 2018, the Honorable Michael Antoniewicz, Administrative Law Judge (ALJ), denied Complainant's motion. *Id.*

The matter was subsequently transferred to the Honorable Elissa Mizzone Testa, ALJ (ALJ Testa), on September 27, 2018, and a hearing was scheduled for February 13, 2019. *Initial Decision (On Remand)* at 2. On the scheduled hearing date, Respondent failed to appear. *Id.* In light of Respondent's failure to appear, an attempt was made to reach him by telephone and, on the record, "he stated that he was aware of the hearing, that he would not be attending, that he had no objection to ... Complainant putting her proofs on the record, and that he did not wish to have the matter rescheduled." *Id.* Based on Respondent's statement, the hearing was conducted on February 13, 2019, and the record was kept open to allow Complainant to submit a written summation, which was done on April 15, 2019; thereafter, the record was closed. *Id.*

On June 27, 2019, ALJ Testa issued an Initial Decision detailing findings of fact, legal conclusions, and a recommended penalty. *Initial Decision (On Remand)* at 3. At a special meeting on August 30, 2019, and after a thorough review of the record (including ALJ Testa's Initial Decision,) the Commission adopted a decision remanding the matter to the OAL. *Id.* In remanding the matter to the OAL, the Commission did not find that additional fact-finding (or a hearing) was necessary, or that the record needed to be reopened so that the parties could introduce additional evidence. *Id.* Instead, the Commission remanded the matter so that (1) the specific facts in the record which support each violation can be more fully explained and (2) the issue of Respondent's entitlement to "free speech" protections can be more fully analyzed. *Id.*

On October 24, 2019, ALJ Testa issued an Initial Decision (On Remand), and the Commission acknowledged receipt of same; therefore, the forty-five (45) day statutory period for the Commission to issue a Final Decision was December 9, 2019.<sup>1</sup> Prior to December 9, 2019, the Commission requested a forty-five (45) day extension of time to issue its final decision. Pursuant to *N.J.S.A.* 52:14B-10(c) and *N.J.A.C.* 1:1-18.8, and for good cause shown, the Commission was granted an extension until January 23, 2020.

At its meeting on November 19, 2019, the Commission considered the full record in this matter. Thereafter, and at its meeting on December 17, 2019, the Commission voted to adopt ALJ Testa's findings of fact; to adopt the legal conclusion that Respondent violated *N.J.S.A.* 18A:12-24.1(c), *N.J.S.A.* 18A:12-24.1(e), *N.J.S.A.* 18A:12-24.1(g), and *N.J.S.A.* 18A:12-24.1(i); to reject the legal conclusion that Respondent violated *N.J.S.A.* 18A:12-24.1(a) and *N.J.S.A.* 18A:12-24.1(d); and to modify the recommended penalty of suspension for "at least six (6) months" to suspension for six (6) months.

## II. Initial Decision

In the Initial Decision (On Remand) dated October 24, 2019, ALJ Testa again noted that Respondent did not appear at the hearing on February 13, 2019, and that no witnesses testified on

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<sup>1</sup> Forty-five (45) days after October 24, 2019, was, technically, Sunday, December 8, 2019.

his behalf. *Initial Decision (On Remand)* at 2, 6. As for Complainant, ALJ Testa found that Complainant credibly testified and, therefore, adopted as **fact**:

- 1) Complainant is a resident of Lodi, and has been employed by the Board for eighteen (18) years as a pre-K teacher. *Initial Decision (On Remand)* at 3.
- 2) Complainant is certified to teach pre-K through eighth grade. *Id.*
- 3) Complainant became a member of the Lodi Education Association (LEA) when she became employed by the Board. *Id.*
- 4) Complainant has held several positions with the LEA during her employment with the Board. More specifically, in 2009, Complainant attended Legislative Action Committee meetings; served as recording secretary for two years around 2011; and served on the LEA's negotiating committee team in 2016. *Id.*
- 5) Complainant testified that, as permitted by the collective negotiations agreement between the Board and the LEA, she "has been released from school" a few times over the years to conduct union business. *Id.*
- 6) Complainant applied for a job with the Board after the Board became eligible for early-childhood funding, and was hiring early-childhood specialists to fill newly created positions. *Id.* at 4.
- 7) Complainant was interviewed by the superintendent for her job, and was offered the job after the Board voted to hire her. *Id.*
- 8) At the time she was hired, Complainant's brother was also employed by the Board, but he was not "involved at all in her gaining employment." *Id.*
- 9) Complainant was appropriately certified to teach pre-K at the time she was hired by the Board. *Id.*
- 10) Complainant testified that Respondent is a Board member "who was officially installed in January 2017, and his term is up in January 2020." *Id.*
- 11) Respondent is currently Board President. *Id.*
- 12) Complainant first met Respondent at a Board meeting in December 2016, at which Respondent made a statement and Complainant responded to his statement during the public comment portion. *Id.*
- 13) After this Board meeting, Complainant became aware that Respondent wrote a blog about Lodi, because she appeared on it for the first time. *Id.*

14) Complainant has appeared on Respondent's blog "multiple times" after the December 2016 meeting. *Id.*

15) From May through June 2017, which was the timeframe for the at-issue blogs, Respondent was a Board member, but not yet Board President. *Id.* at 4-5.

16) From May through June 2017, Complainant was a building representative, a member of the negotiating team, and a chairperson of the Government Relations Committee. *Id.* at 5.

17) Complainant identified several posts that appeared on Respondent's blog and which contained inaccurate or misleading information about contract negotiations (and Complainant's salary), referenced Complainant in a negative manner, depicted a picture of the street where Complainant lives, undermined her credibility with members of the LEA, questioned her qualifications for her teaching position, implied she received her position through patronage, questioned her salary and honesty, and referred to her as a "greedy bastard" and "union bully." *Id.* at 4-5, and 9-10.

18) Between May and June 2017, Complainant testified that "about forty people came up to her" and commented on Respondent's blogs about her. *Id.* at 5. The people who made these comments were aware that Respondent was a Board member because "they are members of the school community, Lodi is a relatively small community, and people had direct knowledge that [Respondent] is a member of the Board." *Id.* at 5-6.

19) Complainant testified that "people questioned her salary based on [Respondent's] blog posts, and also whether she got her teaching job by patronage." *Id.* at 6. Complainant further testified that "several people questioned her based on the blog post that compared her salary to that of newer teachers." *Id.*

20) Complainant stated that "she feels the blog posts undermined her credibility with members of the [LEA] because [Respondent's] posts questioned her salary and honesty." *Id.*

Based on the findings of fact as set forth above, ALJ Testa found that, as a general matter, the evidence at the hearing established that, while serving as a member of the Board, Respondent used his blog to "relentlessly attack" Complainant; called Complainant insulting names, claimed she was hired through patronage, questioned her credentials, posted inaccurate statements about her salary, and attacked her moral character; posted photos of Complainant and her property, including her street on which she lives; and repeatedly referenced and attacked Complainant as an employee of the Board. *Id.* at 9.

Therefore, ALJ Testa concluded that Complainant has proven by a preponderance of the competent and credible evidence that Respondent's actions violated *N.J.S.A.* 18A:12-24.1(a), *N.J.S.A.* 18A:12-24.1(c), *N.J.S.A.* 18A:12-24.1(d), *N.J.S.A.* 18A:12-24.1(e), *N.J.S.A.* 18A:12-24.1(g), and *N.J.S.A.* 18A:12-24.1(i). *Initial Decision (On Remand)* at 13-14. More specifically, and as to the violation of *N.J.S.A.* 18A:12-24.1(a), ALJ Testa noted that Respondent "inaccurately published Complainant's salary" to "negatively impact the opinions of the [LEA]"

and its members, specifically, [Complainant].” *Id.* at 10. In this way, “[Respondent] attempted to effect changes to salaries and policies that govern salaries through the unethical procedure of targeting [Complainant] and misrepresenting her salary, violating *N.J.S.A.* 18A:12-24.1(a).” *Id.*

Regarding the violation of *N.J.S.A.* 18A:12-24.1(c), ALJ Testa explained that Respondent “inaccurately posted [Complainant’s] salary and grossly overstated it by over \$20,000.” *Initial Decision (On Remand)* at 10. Further, the “Board and [LEA] agree to teacher salaries after duly conducted negotiations,” and Respondent “was not a member of the negotiations committee yet acted in a manner unrelated to his duty to develop the general rules and principles that guide the management of the school district.” *Id.* In violation of *N.J.S.A.* 18A:12-24.1(c), Respondent’s post “contained gross misrepresentations, was meant to interfere with negotiations and ‘frame policies and plans’ before the ‘board has consulted those who will be affected by them.’” *Id.*

As to the violation of *N.J.S.A.* 18A:12-24.1(d), ALJ Testa stated that Respondent became “‘directly involved in activities ... that are the responsibility of school personnel or the day to day administration of the school district ... ’ due to his involvement with the hiring process.” *Initial Decision (On Remand)* at 11. According to ALJ Testa, Respondent “repeatedly discussed the merits of [Complainant’s] hiring on his blog,” and “relentlessly discussed salaries and overstated [Complainant’s] salary.” *Id.* ALJ Testa continued, Respondent’s “baseless claims may appear to pressure and influence either Board members or the public to make changes to these matters that affect personnel.” *Id.*

Regarding the violation of *N.J.S.A.* 18A:12-24.1(e), ALJ Testa found that Respondent, a “sitting Board member, repeatedly and deliberately attacked [Complainant], a teacher hired by the same Board, through numerous blog posts.” *Initial Decision (On Remand)* at 11. Not only did he allege that Complainant was unqualified, that she received her job through patronage, he also suggested, among other things, that Complainant was a “greedy bastard” who did not “put children first.” *Id.* ALJ Testa found that Respondent’s “actions on the blog were beyond the scope of his duties as a Board member, and private action of this kind may compromise the [B]oard.” *Id.* ALJ Testa continued, “[i]t is evident that a Board member smearing and verbally attacking a teacher in a publicly accessible forum diminishes the integrity of the Board,” and “[t]he aggressive and intense nature of the posts may clearly have ‘intimidated the public from coming forward and addressing the Board.’” *Id.*

As to the violation of *N.J.S.A.* 18A:12-24.1(g), ALJ Testa found that Respondent “published a post dated May 28, 2017, that stated the fees paid to the [LEA] went towards supporting favorable politicians.” *Initial Decision (On Remand)* at 12. However, this statement was not “backed by evidence and is false,” as *N.J.S.A.* 34:13A-5.5(a)-(c) “explicitly prohibits dues paid by non-union members being used for political expenses.” *Id.* According to ALJ Testa, this post, therefore, “provid[ed] inaccurate and baseless information.” *Id.* Complainant “substantiated the falsity of these claims by testifying that direct political claims are not contributed to by union dues and that a political action committee raises money through direct donations that can be used for specific candidates.” *Id.*

Regarding the violation of *N.J.S.A.* 18A:12-24.1(i), ALJ Testa found that Respondent “repeatedly attacked [Complainant] in his blog,” including: in one post, he “scornfully referred

to Complainant as the Saturday Night Live Charter ‘Debbie Downer’; Respondent “continued to imply she received the job due to her brother’s political activities and that she was unqualified for her position”; Respondent also “questioned what [Complainant’s] resume looked like when she was ‘handed’ the job”; Respondent also suggested that Complainant did not “put children first”; Respondent posted a photo of Complainant’s home (and street location) and claimed that she (Complainant) had “an irrational obsession with liberal politicians” and “was all about attention seeking and feeling relevant”; Respondent alleged that Complainant did not want to resolve contract negotiations; Respondent referred to Complainant as a “greedy bastard” and implied she was a “bully;” and Respondent again referred to Complainant as a “union bull[y]” in a subsequent blog post.” *Initial Decision (On Remand)* at 12. Despite applying for her position, being interviewed, and then approved by the Board for her position, Respondent “deliberately attacked [Complainant’s] qualifications and moral character and this resulted in undermining, opposing, compromising or harming school personnel in the proper performance of their duties.” *Id.* at 12-13. Further, the blog is available to the public, including parents and students within the District, and anyone who reads the blog “would take the inflammatory statements at face value,” and this harms Complainant’s “reputation and her ability to “properly teach and perform her obligations.” *Id.* at 13.

As for Respondent’s rights to free speech, ALJ Testa noted that the Commission previously advised in *Advisory Opinion A02-06*, (A02-06), that although a Board member does not “surrender the right that they have as citizens such as freedom of speech when they become members of a school board,” they must still comply with the Act. *Initial Decision (On Remand)* at 13. Furthermore, in *Advisory Opinion A26-14*, (A26-14), the Commission advised that the “use of social media would require a disclaimer and that the use of social media may not be published on a social media representing ... you as a Board member.” *Id.* In this matter, ALJ Testa found that while Respondent claims to be writing as a private citizen and uses a disclaimer, “it also indisputably represents him as a Board member.” *Id.* Therefore, and because Respondent referenced, on several occasions, his status as a Board member (e.g., “...long before I got on the [B]oard” and “[b]efore I got on the [B]oard”), ALJ Testa found that it is “not convincing” that Respondent was speaking “strictly as a private citizen, as demonstrated by his identifying himself as a Board member in at least two blogs.” *Id.*

In terms of a penalty, ALJ Testa noted that Respondent should have “taken greater care” than to post inaccurate information and disparaging comments about Complainant on social media. *Id.* at 14. The fact that Respondent was a Board member and not Board President does not “diminish the severity, willfulness,” and frequency of his inappropriate conduct. *Id.* In addition, Respondent’s decision not to participate in the hearing demonstrates his lack of remorse and lack of acceptance of responsibility for his conduct. *Id.* Therefore, ALJ Testa concluded that a penalty of suspension for no less than six (6) months is warranted. *Id.*

### **III. Exceptions**

On November 4, 2019, Respondent filed **Exceptions** to the Initial Decision (On Remand), and stated that ALJ Testa “did not bother to correct her blatantly false statements beginning with the first sentence of her decision.” Respondent also requested that the Commission “reapply [his] previously submitted ‘exceptions’ to” ALJ Testa’s Initial Decision.

In his previously filed Exceptions (on July 7, 2019), Respondent notes that ALJ Testa claims, “The [Commission] issued a Probable Cause Notice . . .,” but Respondent argues this statement is not true. Respondent maintains the Commission has never issued a probable cause notice against him and although he notified ALJ Testa “multiple times” that this was not a true statement, she has not made a correction. Respondent also argues that ALJ Testa’s decision is not evidence based. Respondent claims that on February 13, 2019, he explained that he runs a family business, that he has repeatedly answered the Complaint, and asked ALJ Testa to refer to the answers that he submitted; however, ALJ Testa replied that she would not consider Respondent’s answers or evidence, only the testimony at the hearing. Respondent further argues that contrary to what she said to him, ALJ Testa considered the summation submitted on April 15, 2019, from counsel (Oxford), which ALJ Testa used as her decision, in addition to counsel’s recommended penalty. Respondent further argues that hearings and decisions should not be based on hearsay. Respondent contends that ALJ Testa’s personal opinions or personal observations of demeanor does not make something fact. More specifically, when ALJ Testa notes, “Based upon consideration of testimonial and documentary evidence . . . and having the opportunity to observe the demeanor of the witness . . . I FIND the above testimony as Fact.” Respondent argues this is not fact when “overwhelming evidence shows otherwise.” Respondent maintains his posts are accurate as demonstrated in the exhibits, Complainant did get her job through patronage and he obtained her salary information from the 2017-2018 school budget. Respondent contends that Complainant is an “NJEA activist and political operative,” who uses the NJEA to file complaints using union dues against anyone who opposes her. Respondent maintains that none of the allegations have to do with his position as a Board member, they are about his personal blog, which does not contain any confidential information, and which he has the right as a citizen to express.

Finally, in his most recent submission, Respondent noted that he is running for re-election (November 5, 2019) against the New Jersey Education Association (NJEA) endorsed slate, and Complainant’s brother is the “treasurer.” Further, Respondent maintains that Complainant’s brother and sister have used ALJ Testa’s decision to attack him on social media. Respondent further maintains that the “timing of [ALJ] Testa’s decision and her intentional disregard for the evidence and facts give the appearance of political motivation.”

Complainant did *not* file a reply to Respondent’s Exceptions, or file her own Exceptions.

#### **IV. Analysis**

Upon careful and independent review of the facts and evidence set forth in the record, the Commission **adopts** ALJ Testa’s findings of fact, and **adopts** the legal conclusion that Respondent violated *N.J.S.A. 18A:12-24.1(c)*, *N.J.S.A. 18A:12-24.1(e)*, *N.J.S.A. 18A:12-24.1(g)*, and *N.J.S.A. 18A:12-24.1(i)*. In adopting these legal conclusions, the Commission finds that there is sufficient credible evidence cited in support of each violation of the Code.

Notwithstanding the above, the Commission **rejects** the legal conclusion that Respondent violated *N.J.S.A. 18A:12-24.1(a)* and *N.J.S.A. 18A:12-24.1(d)*. Although ALJ Testa found that Respondent engaged in the “unethical procedure” of targeting Complainant and repeatedly

misrepresenting her salary in an effort to negatively impact the opinions that others had of the LEA and its members, especially Complainant, the Commission finds that these facts are insufficient to support a violation of *N.J.S.A.* 18A:12-24.1(a).

Pursuant to *N.J.A.C.* 6A:28-6.4(a)(1), factual evidence of a violation of *N.J.S.A.* **18A:12-24.1(a)** shall include a copy of a final decision from any court of law or administrative agency of this State demonstrating that Respondent failed to enforce all laws, rules and regulations of the State Board of Education, and/or court orders pertaining to schools or that Respondent brought about changes through illegal or unethical procedures. Despite being required by *N.J.A.C.* 6A:28-6.4(a)(1), Complainant has not provided, and the underlying record does not contain, a copy of a final decision(s) from any court of law or other administrative agency demonstrating that Respondent violated a specific law, rule, or regulation when he posted the inaccurate and misleading information on his social media page. Absent such a final decision, and even if the accusations may be actionable in another forum, there is insufficient credible evidence in the record to support a finding that Respondent violated *N.J.S.A.* 18A:12-24.1(a).

In addition, because Respondent repeatedly discussed the merits of Complainant's hiring on his blog, and relentlessly discussed and misrepresented Complainant's salary, ALJ Testa found that, in violation of *N.J.S.A.* **18A:12-24.1(d)**, Respondent became “‘directly involved in activities ... that are the responsibility of school personnel or the day to day administration of the school district ...’ due to his involvement with the hiring process.” *Initial Decision (On Remand)* at 11. Although Respondent's posts and comments were clearly inappropriate, and serve as the basis for other violations of the Code, they had no impact on whether Complainant *was actually* hired because, at the time they were made, Complainant was already employed in the District. There was also no factual evidence presented that, as a result of Respondent's accusations, an investigation was conducted by the District or its personnel to ascertain whether Complainant should be removed from her position. Consequently, and because Respondent's posts and comments did not actually impact her hiring (or retention), the Commission finds that there is insufficient credible evidence in the record to support a finding that Respondent violated *N.J.S.A.* 18A:12-24.1(d).

## **V. Decision**

For the reasons more fully detailed above, the Commission determines to **adopt** ALJ Testa's findings of fact; to **adopt** the legal conclusion that Respondent violated *N.J.S.A.* 18A:12-24.1(c), *N.J.S.A.* 18A:12-24.1(e), *N.J.S.A.* 18A:12-24.1(g), and *N.J.S.A.* 18A:12-24.1(i); and to **reject** the legal conclusion that Respondent violated *N.J.S.A.* 18A:12-24.1(a) and *N.J.S.A.* 18A:12-24.1(d).

## **VI. Penalty**

Based upon the conclusion that Respondent violated multiple provisions of the Code, and because she indicated that Respondent should have “‘taken greater care” than to post inaccurate information and disparaging comments about Complainant on social media, ALJ Testa recommended a penalty of suspension for “‘not less than six (6) months.”

The Commission agrees with ALJ Testa that Respondent's deliberate, unnecessary, and repeated attacks on Complainant, her qualifications, her salary, and her general employment in the District, is worthy of a harsh penalty. The imposition of a harsh penalty is further necessitated by the fact that, by and large, Respondent's comments and posts about Complainant's qualifications, hiring, and salary were not accurate or truthful. However, and only because it rejected the conclusion that Respondent violated *N.J.S.A.* 18A:12-24.1(a) and *N.J.S.A.* 18A:12-24.1(d), the Commission modifies ALJ Testa's recommended penalty to find that **suspension for six (6) months**, as opposed to suspension for at least six months, is warranted.<sup>2</sup> But for its rejection of the conclusion that Respondent violated *N.J.S.A.* 18A:12-24.1(a) and *N.J.S.A.* 18A:12-24.1(d), the Commission would have recommended a suspension for a much longer duration, and possibly removal.

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

Parties taking exception to the recommended sanctions of the Commission but *not disputing* the Commission's findings of violations may file, within **thirteen (13) days** from the date the Commission's decision is forwarded to the Commissioner, written exceptions regarding the recommended sanctions to the Commissioner. The forwarding date shall be the mailing date to the parties, as indicated below. Such exceptions must be forwarded to: Commissioner of Education, c/o Bureau of Controversies and Disputes, P.O. Box 500, Trenton, New Jersey 08625, marked "Attention: Comments on Ethics Commission Sanction." A copy of any comments filed must be sent to the Commission and all other parties.

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

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Robert W. Bender, Chairperson  
School Ethics Commission

Mailing Date: December 18, 2019

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<sup>2</sup> Although Respondent is still a member of the Board, following the Board's reorganization meeting in January 2020, and because he was not re-elected, Respondent will no longer serve on the Board.

**Resolution Adopting Decision  
in Connection with C70-17**

**Whereas**, at its meeting on November 28, 2017, and pursuant to *N.J.A.C.* 6A:28-10.8(a), the School Ethics Commission (Commission) voted to transmit the allegations relating to Respondent Curioni to the Office of Administrative Law (OAL) for a plenary hearing; and

**Whereas**, following a hearing on February 13, 2019, at which Respondent did not appear, the Honorable Elissa Mizzone Testa, Administrative Law Judge (ALJ Testa), issued an Initial Decision dated June 27, 2019; and

**Whereas**, in the Initial Decision, it was determined that Petitioner had proven, by a preponderance of the competent and credible evidence, that Respondent's actions violated *N.J.S.A.* 18A:12-24.1(a), *N.J.S.A.* 18A:12-24.1(c), *N.J.S.A.* 18A:12-24.1(d), *N.J.S.A.* 18A:12-24.1(e), *N.J.S.A.* 18A:12-24.1(g), and *N.J.S.A.* 18A:12-24.1(i); and

**Whereas**, based on these legal conclusions, ALJ Testa recommended a penalty of suspension for no less than six (6) months; and

**Whereas**, at its meeting on August 30, 2019, and after reviewing and discussing the record at its meeting on July 23, 2019, the Commission voted to adopt a decision remanding the matter to the OAL; and

**Whereas**, on October 24, 2019, ALJ Testa issued another Initial Decision (On Remand); and

**Whereas**, in the Initial Decision (On Remand), it was determined that Petitioner had proven, by a preponderance of the competent and credible evidence, that Respondent's actions violated *N.J.S.A.* 18A:12-24.1(a), *N.J.S.A.* 18A:12-24.1(c), *N.J.S.A.* 18A:12-24.1(d), *N.J.S.A.* 18A:12-24.1(e), *N.J.S.A.* 18A:12-24.1(g), and *N.J.S.A.* 18A:12-24.1(i); and

**Whereas**, based on ALJ Testa's legal conclusions, she recommended a penalty of suspension for no less than six (6) months; and

**Whereas**, on November 4, 2019, Respondent filed Exceptions, but Complainant did not file a reply to Respondent's Exceptions, or otherwise file her own Exceptions; and

**Whereas**, at its meeting on November 19, 2019, the Commission discussed adopting ALJ Testa's findings of fact; rejecting the legal conclusion that Respondent violated *N.J.S.A.* 18A:12-24.1(a); adopting the legal conclusion that Respondent violated *N.J.S.A.* 18A:12-24.1(c); rejecting the legal conclusion that Respondent violated *N.J.S.A.* 18A:12-24.1(d); adopting the legal conclusion that Respondent violated *N.J.S.A.* 18A:12-24.1(e); adopting the legal conclusion that Respondent violated *N.J.S.A.* 18A:12-24.1(g); adopting the legal conclusion that Respondent violated *N.J.S.A.* 18A:12-24.1(i); and modifying the recommended penalty of suspension for "at least six (6) months" to suspension for six (6) months; and

*Whereas*, at its meeting on December 17, 2019, the Commission reviewed and voted to approve the within decision as accurately memorializing its actions/findings from its meeting on November 19, 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.

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Robert W. Bender, Chairperson

I hereby certify that this Resolution was duly adopted by the School Ethics Commission at its meeting on December 17, 2019.

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Kathryn A. Whalen, Director  
School Ethics Commission