

***Before the School Ethics Commission  
OAL Docket No.: EEC-04784-16  
SEC Docket No.: C09-15  
Final Decision***

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***In the Matter of Jose Rodriguez,  
Elizabeth Board of Education, Union County***

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**I. Procedural History**

The above-captioned matter arises from a seven (7) count deficient Complaint that was initially filed with the School Ethics Commission (Commission) on February 2, 2015, by Ana Maria Amin, Elcy Castillo-Ospina, Tony Montiero, Paul Perreira, and Carlos Trujillo (Complainants), members of the Elizabeth Board of Education (EBOE or Board), alleging that Jose Rodriguez (Respondent), also a member of the EBOE, violated the School Ethics Act (Act), *N.J.S.A.* 18A:12-21 *et seq.* On July 22, 2015, Complainants cured all defects and filed an Amended Complaint (Complaint) that alleges 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(c), *N.J.S.A.* 18A:12-24(d), and *N.J.S.A.* 18A:12-26.

At its meetings on November 24, 2015, and December 15, 2015, and after previously denying Respondent's Motion to Dismiss In Lieu of Answer, the Commission found probable cause to credit the allegations that Respondent violated *N.J.S.A.* 18A:12-24(a) and *N.J.S.A.* 18A:12-24(d) in Count 1; *N.J.S.A.* 18A:12-24(b) and *N.J.S.A.* 18A:12-24(c) in Count 2, Count 4, and Count 6; and *N.J.S.A.* 18A:12-26 in Count 7. However, the Commission did not find probable cause for the alleged violations of *N.J.S.A.* 18A:12-24(b) or *N.J.S.A.* 18A:12-24(c) in Count 3 or Count 5, and dismissed those claims. On March 28, 2016, the above-captioned matter was transmitted to the Office of Administrative Law (OAL) for a plenary hearing. With this transmittal, and in accordance with *N.J.A.C.* 6A:28-10.7(b)(1), the attorney for the Commission (Petitioner) was charged with prosecuting the allegations in the Complaint for which the Commission found probable cause, and Complainants were no longer a party.

At the OAL, the matter was initially assigned to the Honorable Joan Bedrin Murray, Administrative Law Judge (ALJ), but later reassigned to the Honorable Elissa Mazzone Testa, ALJ (ALJ Testa), on December 20, 2017. *Initial Decision* at 2. On March 21, 2019, Petitioner filed a Motion for Summary Decision, and Respondent filed a Cross-motion for Summary Decision on March 22, 2019. *Id.* On April 22, 2019, both parties filed an opposition to their adversary's filing. *Id.* Oral argument was held on October 31, 2019, and the last responsive pleading was submitted to ALJ Testa on November 4, 2019, at which point the record closed. *Id.*

On January 27, 2020, ALJ Testa issued an Initial Decision detailing her findings of fact, and legal analysis. Based on her findings of fact and legal analysis, ALJ Testa concluded that Petitioner had proven, by a preponderance of the competent and credible evidence, that Respondent's actions violated *N.J.S.A.* 18A:12-26. *Id.* at 13. Based on this legal conclusion, and after considering the totality of the circumstances, ALJ Testa recommended a penalty of censure for Respondent's unethical conduct. *Id.* at 16.

The Commission acknowledged receipt of ALJ Testa's Initial Decision on January 27, 2020; therefore, the forty-five (45) day statutory period for the Commission to issue a Final Decision was March 12, 2020. Prior to March 12, 2020, 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 (if any). 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 April 27, 2020.<sup>1</sup>

On February 28, 2020, both Petitioner and Respondent filed Exceptions to the Initial Decision. On March 6, 2020, Petitioner filed a reply to Respondent's Exceptions, and on March 9, 2020, Respondent filed a reply to Petitioner's Exceptions.

At a special meeting on March 17, 2020, the Commission considered and discussed the full record in this matter, including ALJ Testa's Initial Decision and the parties' respective Exceptions and responses. Thereafter, and at its meeting on April 21, 2020, and for the reasons more fully detailed below, the Commission voted to adopt ALJ Testa's findings of fact except for the statement that a local education association is not an affiliate of the larger statewide education association; to adopt ALJ Testa's legal conclusion that Respondent violated *N.J.S.A. 18A:12-26*; to adopt ALJ Testa's legal conclusion that Respondent did not violate *N.J.S.A. 18A:12-24(a)*, *N.J.S.A. 18A:12-24(b)*, *N.J.S.A. 18A:12-24(c)*, and/or *N.J.S.A. 18A:12-24(d)* as alleged in the remaining counts of the Complaint (Counts 1-2, 4, and 6-7), but to reject the statement that a local education association is not an affiliate of the larger statewide education association; and to adopt the recommend penalty of censure.

## **II. Brief Summary of the Allegations Transmitted to the OAL**

Although Complainants initially filed a seven (7) count Complaint, two (2) counts (Count 3 and Count 5) were dismissed by the Commission prior to transmittal to the OAL. The remaining Counts and allegations to be prosecuted by the Commission are summarized as follows:

### ***Count 1***

From January 2014 through December 2014, Respondent failed to disclose his role as President of the Watchung Hills Regional Education Association (WHREA), and as member and chair of its bargaining unit. During that time, the Elizabeth Education Association (EEA), an affiliate of the New Jersey Education Association (NJEA), filed several legal actions against the EBOE totaling approximately \$37 million. This conflict led to the EBOE's attorney advising Respondent not to participate in a number of Board actions arising from his conflicts. Despite the EBOE's attorney's advice, Respondent voted on numerous personnel matters and negotiations, from which Complainants allege that he benefitted. Complainants assert this was a violation of *N.J.S.A. 18A:12-24(a)* and *N.J.S.A. 18A:12-24(d)*.

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<sup>1</sup> Forty-five (45) days after March 12, 2020, is, technically, Sunday, April 26, 2020.

### ***Count 2***

Complainants allege that, on November 20, 2014, Respondent voted on the EBOE's Memorandum of Agreement (MOA) with the Elizabeth Directors' Association (EDA). Complainants assert this was a violation of *N.J.S.A.* 18A:12-24(b) and *N.J.S.A.* 18A:12-24(c).

### ***Count 4***

Complainants allege that at various meetings between November 20, 2014, and December 11, 2014, Respondent voted on the EBOE's confidential settlement agreements regarding arbitrations, grievances and other legal matters involving Board employees, many of whom were members of the NJEA and/or EEA. Complainants assert this was a violation of *N.J.S.A.* 18A:12-24(b) and *N.J.S.A.* 18A:12-24(c).

### ***Count 6***

Complainants allege that on January 7, 2015, Respondent defied the Board attorney's advice to recuse himself from matters in which he had a conflict of interest, including the election of the Board President and Board Counsel, and voted on those matters nonetheless. Complainants assert this was a violation of *N.J.S.A.* 18A:12-24(b) and *N.J.S.A.* 18A:12-24(c).

### ***Count 7***

Complainants allege that Respondent failed to include \$3,500 in income on his 2014 Financial Disclosure statement in violation of *N.J.S.A.* 18A:12-26.

## **III. Initial Decision**

As set forth in the Initial Decision, ALJ Testa found the following undisputed facts to be the operative facts in the above-captioned matter:

- 1) Respondent was a member of the EBOE from January 7, 2014, to November 19, 2018. *Id.* at 2.
- 2) As a new member of the EBOE, Respondent was required to complete and submit Personal/Relative and Financial Disclosure Statements (Disclosure Statements) reporting income in excess of \$2,000 pursuant to *N.J.S.A.* 18A:12-26 and *N.J.A.C.* 6A:28-3.1. *Id.*
- 3) Pursuant to *N.J.S.A.* 18A:12-26, and *N.J.A.C.* 6A:28-3.1, Respondent filed his Disclosure Statements with the Commission on January 14, 2014. The Disclosure Statements required that Respondent disclose the name and address of each source of income, earned or unearned, from which Respondent, or a member of his immediate family, received an amount in excess of \$2,000 during the 2013 calendar year. *Id.* at 2-3.
- 4) The EEA is the local teacher's union/association in the Elizabeth School District (District). *Id.* at 3.

- 5) Respondent himself is not, nor has he ever been, a member of the EEA. Id.
- 6) The EEA has filed numerous lawsuits against the EBOE. Id.
- 7) The EEA and the EBOE were engaged in collective bargaining negotiations prior to the expiration of their agreement in June 2015. Id.
- 8) Respondent physically removed himself from the room any and every time collective bargaining negotiations occurred during calendar years 2014 and 2015. Id.
- 9) The WHREA is the teacher's union for the Watchung Hills Regional School District (WHRSD). Id.
- 10) Respondent works as a teacher in the WHRSD. Id.
- 11) Respondent has been a teacher in the WHRSD since September 2005. Id.
- 12) In his capacity as a teacher in the WHRSD, Respondent is also a member of the WHREA, and has been a member of the WHREA since September 2005. Id.
- 13) Respondent served as the Vice President of the WHREA from May 2010 to May 2013. Id.
- 14) Respondent received \$3,500.00 in annual compensation as the Vice President of the WHREA, a portion of which was paid to him during the 2013 calendar year. Id.
- 15) Respondent served as the President of the WHREA from May 2013 until May 2015. Id.
- 16) Respondent received \$10,000.00 in annual compensation as the President of the WHREA, a portion of which was paid to him during the 2013 calendar year. Id. at 4.
- 17) In total, Respondent received more than \$2,000.00 in compensation from the WHREA during the 2013 calendar year. Id.
- 18) Respondent did not include the WHREA as a source of income received during the 2013 calendar year on his January 14, 2014, Disclosure Statements. Id.
- 19) On January 8, 2015, Respondent contacted the Union County Office of Education, regarding the process for amending his Disclosure Statements. He was told to contact the District's Board Secretary. Id.

- 20) On January 21, 2015, Harold E. Kennedy, EBOE Business Administrator/Board Secretary, emailed the Commission requesting advice as to how an unnamed school official could amend previously filed Disclosure Statements. Jill Greenberg Kail (Kail) responded on behalf of the Commission, and stated that the Commission would not assist the unnamed school official in amending the 2014 statement. Id.
- 21) The Commission does not dispute the fact that the filer referenced by Business Administrator/Board Secretary Kennedy is Respondent. Id.
- 22) From January 2014 until May 2015, Respondent served concurrently on the EBOE and the Executive Board of the WHREA. Id.
- 23) At no time between January 2014 and May 2015 did Respondent serve on the EBOE's Finance and Accounting Standing Committee. Id.
- 24) Based upon her representation, it is the Commission's understanding that Complainant Amin learned of Respondent's membership in the WHREA, including his term as President, in January 2015 from EBOE Counsel's, Marvin Lehman, Esq. (Lehman), letter dated January 7, 2015, to the EBOE. Id. at 4-5.
- 25) Based upon her representation, it is the Commission's understanding that, when Complainant Amin became a member of the EBOE in January 2015, she did not voice any objection to Respondent's participation in discussion or voting prior to the issuance of Lehman's January 7, 2015, letter to the EBOE. Id. at 5.
- 26) Based upon her representation, it is the Commission's understanding that Complainant Castillo-Ospina learned of Respondent's membership in the WHREA, including his term as President, during the fall of 2014 from another EBOE member. Id.
- 27) Based upon her representation, it is the Commission's understanding that Complainant Castillo-Ospina does not recall any specific voicing of an objection to Respondent's participation in discussions or voting prior to the issuance of Lehman's January 7, 2015, letter to the EBOE. Id.
- 28) Based upon his representation, it is the Commission's understanding that Complainant Monteiro learned of Respondent's membership in the WHREA, including his term as President, from Respondent in September or October 2014 and spoke with Respondent occasionally about his WHREA position. Id.
- 29) Based upon his representation, it is the Commission's understanding that Complainant Monteiro voiced objections to Respondent's "participation in meetings while Respondent was the President of the WHREA," but he does not recall the details of the objections he raised, when or with whom he shared his objections. Id.

- 30) Based upon his representation, it is the Commission's understanding that Complainant Trujillo learned of Respondent's membership in the WHREA, including his term as President, from Respondent in September or October 2014, and spoke with Respondent occasionally about his WHREA position. Id.
- 31) Based upon his representation, it is the Commission's understanding that Complainant Trujillo voiced objections to Respondent's "participation in meetings while Respondent was the President of the WHREA," but he does not recall when or with whom he shared his objections, and he does not recall the details of same. Id. at 5-6.
- 32) Based upon the EBOE Meeting Minutes of January 7, 2015, it is the Commission's understanding that Complainant Perrira learned of Respondent's membership in the WHREA, including his term as President, during the EBOE's executive session in December 2014. Id. at 6.
- 33) The EDA is a union in Elizabeth for Directors in the District. Id.
- 34) The EDA is in no way affiliated with the NJEA or EEA. Id.
- 35) On November 20, 2014, Respondent voted on the EBOE's MOA with the EDA. Id.
- 36) Between August 2014 and the filing of the Complaint on July 22, 2015, Respondent voted on numerous matters before the EBOE involving NJEA and/or EEA members. Id.
- 37) Between August 2014 and the filing of the Complaint in this matter on July 22, 2015, Respondent voted on several settlement agreements between the EBOE and EEA members. Id. at 6-7.
- 38) On January 7, 2015, then-EBOE-Counsel, Lehman, at the direction of the EBOE's Legal Committee, issued a legal opinion to the EBOE on whether Respondent's position as President of the WHREA presented a conflict of interest with his position as a Board Member. Lehman's legal opinion was that a conflict of interest did exist, and that Respondent could not participate in the appointment of legal counsel and the election of the EBOE President or serve as the EBOE President. Id. at 7.
- 39) Lehman's letter also instructed the Board Secretary/Business Administrator not to count Respondent's vote on the election of the EBOE President and the appointment of legal counsel and insurance consultants "[i]f Mr. Rodriguez chooses, to ignore this advice." Id. at 7-8.
- 40) Respondent did not follow the recommendations set forth in Lehman's opinion letter. Id. at 8.

- 41) Prior to receiving Lehman’s letter and recommendations, Respondent nominated a candidate for EBOE President. *Id.*
- 42) After distribution of Lehman’s letter and recommendations, Respondent voted for the EBOE President, who was elected 9-0. *Id.*
- 43) After receiving Lehman’s letter and recommendations, Respondent introduced a resolution to appoint a new General Counsel and attempted to vote on the resolution to appoint a new General Counsel. *Id.*
- 44) The Board Secretary/Business Administrator did not record Respondent’s vote on this item. *Id.*
- 45) After receiving Lehman’s letter and recommendations, Respondent seconded a resolution to appoint a new Special Counsel and attempted to vote on the resolution to appoint a new Special Counsel. *Id.*
- 46) The Board Secretary/Business Administrator did not record Respondent’s vote on this item. *Id.*
- 47) On March 2, 2015, Lehman sent the EBOE a follow-up to his January 7, 2015, letter, in which he notified the EBOE of Commission Advisory Opinion A13-13. *Id.*
- 48) Based upon the content of Advisory Opinion A13-13, Lehman advised the EBOE that Respondent’s conflict of interest was so pervasive “that even if [Respondent] were to resign from his position with the NJEA or its affiliates, the conflict would not be cleared, and the conflict would extend fort his entire 3-year term with the [EBOE].” *Id.* at 8-9.
- 49) Respondent disputes that he had a “position with the NJEA.” *Id.* at 9.
- 50) Respondent has never previously been found to have violated the Act. *Id.*

Based on the preponderance of credible evidence, and with the standard for summary decision in mind, ALJ Testa *finds*, as agreed by both parties, that Respondent failed to report his 2013 WHREA income on his 2014 Disclosure Statements, which is a “clear violation of *N.J.S.A.* 18A:12-26(1).” *Id.* at 12. Despite acknowledging his failure in this regard, Respondent argues that he should not be punished because “he self-reported his non-disclosure and he followed the advice given to him by the [Commission].” *Id.* As to this argument, ALJ Testa noted that “this self-reporting was not until one (1) year post the January 14, 2014, filing,” and that Respondent “filed his report the day after the Board discussed his failure to disclose his 2013 WHREA income because he believed it was not legally mandated.” *Id.* According to ALJ Testa, “[i]t is evident that [R]espondent intentionally did not disclose his 2013 WHREA income and that he only reported his non-disclosure upon being prompted by the Board.” *Id.* Consequently, Respondent’s “strategy ... to frame his self-reporting as a good-faith attempt to amend his 2014 ... Disclosure Statement[s] ... was a self-serving effort to save face.” *Id.* But for the motivation of outside sources, “it is very likely that it would not have occurred.” *Id.* The fact that

Respondent may have believed that he was not legally mandated to disclose his WHREA income is “of no moment.” *Id.* at 13. Therefore, ALJ Testa **concludes** that Respondent violated *N.J.S.A.* 18A:12-26.

Regarding Petitioner’s claim that Respondent violated *N.J.S.A.* 18A:12-24(a), *N.J.S.A.* 18A:12-24(b), *N.J.S.A.* 18A:12-24(c), and *N.J.S.A.* 18A:12-24(d) by “voting on settlements between the EBOE and EEA members,” the crux of Petitioner’s argument is that, because WHREA and the EEA are local affiliates of NJEA, Respondent’s “position as the President of the WHREA generated a conflict of interest which should have barred him from voting in the settlement proceedings.” *Id.* at 13. According to ALJ Testa, there is no “proof that by being a member of the WHREA [an individual is] a member of the NJEA.” *Id.* at 15. Consequently, ALJ Testa **finds** that “Respondent could vote, but not participate directly in the negotiations with the EEA.” *Id.* In light of the fact that the parties agree that Respondent “left the room whenever there were ongoing union negotiations, it cannot be said that he participated in the negotiations.” *Id.* Because Respondent “was only a member of the WHREA, not the NJEA,” ALJ Testa **concludes** that Respondent’s actions to vote on already negotiated settlements does not amount to a violation of *N.J.S.A.* 18A:12-24(a), *N.J.S.A.* 18A:12-24(b), *N.J.S.A.* 18A:12-24(c), and *N.J.S.A.* 18A:12-24(d). *Id.*

As for the appropriate penalty, ALJ Testa noted that Respondent “self-reported his non-disclosure and then acted in accordance with advice of the [Commission], but only after his failure to report his WHREA income was discussed at a [B]oard meeting.” *Id.* at 16. Thus, Respondent’s “conduct was more than a mere oversight or a misunderstanding of law.” *Id.* In addition, the issue of non-disclosure is not moot because Respondent resigned from the Board, and does not negate his non-compliance with *N.J.S.A.* 18A:12-26. *Id.* Furthermore, and since Respondent “is no longer a part of the EBOE and has already voluntarily resigned from his position,” a penalty of censure is warranted. *Id.*

Based on the information set forth above, ALJ Testa **granted** Petitioner’s Motion for Summary Decision, **denied** Respondent’s Motion for Summary Decision, and recommended a penalty of **censure** for Respondent’s violation of *N.J.S.A.* 18A:12-26.

#### **IV. Summary of the Parties’ Exceptions**

##### **A. Petitioner’s Exceptions**

Petitioner agrees with the ALJ’s finding that Respondent’s failure to disclose his WHREA income violated *N.J.S.A.* 18A:12-26 (Count 7). Petitioner notes that the ALJ did not “render a decision” regarding whether Respondent’s failure to disclose his role as an “official and agent of the NJEA through his role as President of the WHREA” violated *N.J.S.A.* 18A:12-24(a) or *N.J.S.A.* 18A:12-24(d), nor whether Respondent’s participation in a Board vote regarding the appointment of counsel violated *N.J.S.A.* 18A:12-24(b) or *N.J.S.A.* 18A:12-24(c). Petitioner further notes that the ALJ concluded only that Respondent had not violated *N.J.S.A.* 18A:12-24(a), *N.J.S.A.* 18A:12-24(b), *N.J.S.A.* 18A:12-24(c), or *N.J.S.A.* 18A:12-24(d) by voting on “already negotiated upon settlements.” Furthermore, Petitioner takes exceptions to the ALJ’s findings that Respondent was not a member of the NJEA, that the WHREA is an “entirely separate entity from the NJEA,” and that “there was no conflict of interest resulting from

[Respondent's] concurrent service on both the Executive Board of the WHREA and on the [EBOE]." Petitioner argues that the WHREA is a local affiliate of the NJEA, and Respondent was not only a member of the NJEA, "but rather an agent of the NJEA." Petitioner asserts that the ALJ "failed to fully consider" the evidence that was submitted, which provided "the WHREA is a local [affiliate] of the NJEA and is 'a registered non-profit labor organization operating under the name of the NJEA,'" as well as the evidence that the NJEA, through its own "public-facing materials, considers the WHREA to be a Regional Office of the NJEA and considers the local association leadership ... to be Representatives of the NJEA." Petitioner asserts the "Record supports the conclusion that the WHREA is a local affiliate of the NJEA, and that, through his role as President of the WHREA, Respondent acted as a representative, or agent, of the NJEA."

Petitioner argues that "the record supports the conclusion that Respondent violated *N.J.S.A.* 18A:12-24(a) and *N.J.S.A.* 18A:12-24(d) by failing to disclose his service as 'an official agent of the NJEA through his role as president of the WHREA.'" Petitioner further argues that Respondent "was not just a member of the NJEA, but rather a representative and agent of the NJEA. Respondent was paid to serve as President of the WHREA ... and was expected to advance the goals of the NJEA." Petitioner maintains that Respondent participated as a Board member in voting on matters related to the EEA/NJEA, and that Respondent "should have been aware that his role as a representative of the NJEA presented a conflict ... with regard to voting on matters" related to the EEA/NJEA. Furthermore, Respondent's "failure to disclose this conflict has the potential to give the public the impression that his independent judgment is compromised."

Petitioner defends that "the record supports the conclusion that Respondent violated *N.J.S.A.* 18A:12-24(b) and *N.J.S.A.* 18A:12-24(c) by voting on matters on which he had a conflict of interest." As stated above, Respondent voted on matters related to the EEA/NJEA, even after being advised by Board counsel that he had a conflict. In addition, other Board members questioned Respondent's potential conflict. In short, Respondent ignored counsel's advice and his fellow Board member's concerns. Petitioner further defends that due to Respondent's membership in the NJEA, "the potential is high for the public to perceive that his judgment when considering and voting on a settlement as a [Board] member is colored by his role with the WHREA" and "the potential is high for the public to believe that Respondent's votes regarding president of the board and special labor counsel were impacted by his dual loyalties to both the [Board] and the WHREA."

Petitioner asserts that for these reasons, the Initial Decision should be "modified to find that the WHREA is a local affiliate of the NJEA and Respondent was an agent of the NJEA," and that Respondent violated *N.J.S.A.* 18A:12-24(a) and *N.J.S.A.* 18A:12-24(d) "by failing to disclose his role as President of the WHREA," and violated *N.J.S.A.* 18A:12-24(b) and *N.J.S.A.* 18A:12-24(c) "by voting on matters on which he had a conflict of interest."

### *Respondent's Reply to Petitioner's Exceptions*

Respondent argues that Petitioner fails to prove that Respondent was a member of the NJEA. According to Respondent, Petitioner's "evidence" is as follows: Petitioner's reliance on the "factual findings of a 'self-interested'" Board counsel; a printout from the WHREA website that refers to an NJEA video; and a printout from the NJEA website that mentions the WHREA leadership. As argued by Respondent, this evidence is not substantial enough to support the conclusion that Respondent was a member of the NJEA. Furthermore, Respondent notes that Petitioner did not offer any facts to support its legal position and, as noted in the Initial Decision, "Petitioner failed to cite legal authority that deems membership in the NJEA synonymous with membership in the WHREA." Respondent further argues that "Respondent cannot be deemed a member of the NJEA simply because the NJEA and [the] WHREA serve similar general purposes, and the NJEA's work may provide incidental benefits to the WHREA." Respondent asserts that the NJEA and the WHREA "are two separate entities requiring dues be paid to each separately," and Respondent admitted to paying dues to the WHREA.

Respondent asserts that he "publicly discussed his WHREA (as opposed to NJEA) membership with several Board members" and while attending training "asked openly about any conflicts presented by his union membership." Respondent maintains Petitioner did not provide any evidence that supports that Respondent "took any action(s) as an 'agent' or 'official' of the NJEA." Respondent further maintains that "Petitioner's failure to establish Respondent's membership in the NJEA is fatal to all of its conflict of interest arguments, making it unnecessary for the ALJ to reach the additional claims on which Petitioner now focuses."

Respondent further argues that Petitioner did not offer any evidence to support its claim that the evidence was "offered to show that, according to the NJEA itself, the WHREA is a local affiliate of the NJEA." Respondent maintains that "in none of Petitioner's offered evidence does the NJEA declare WHREA to be a local affiliation." In addition, "even if Petitioner had evidenced that the NJEA declared the WHREA to be a local affiliate, that declaration would be beside the point because organizational affiliation would not serve to bar Respondent's voting activities." Respondent maintains if the WHREA was proven to be an affiliate of the NJEA, Respondent's only prohibition would have been "against his presence during, and participation in, collective bargaining." Respondent notes that it is "undisputed" that he "did not participate in, nor was he present at, **any** contract negotiations during his tenure." Respondent concludes that "it is clear that neither Petitioner's evidence nor its cited authorities establish a conflict of interest, all of Respondent's voting activities were permissible." For these reasons, Respondent "urges the Commission to uphold the ALJ's Initial Decision finding that Respondent was not a member of the NJEA, giving rise to a conflict of interest."

#### ***B. Respondent's Exceptions***

Respondent "takes exception to the penalty" recommended by the ALJ, and notes that although Petitioner "issu[ed] roughly 11 claims of violations against Respondent ... the ALJ found Respondent to have committed a single violation." Furthermore, Respondent argues that the violation was "an inadvertent failure to disclose an income source on his annual disclosure form," that he admitted and which the Commission generally addresses with a penalty of reprimand. "However, after considering one aggravating factor and none of several mitigating

factors ... the ALJ elected to issue the more significant penalty of censure.” Respondent further argues that this penalty is “disproportionate and inconsistent with past precedent” and requests that the Commission modify the penalty to a reprimand.

Respondent maintains that he completed and filed his Disclosure Statements on or about January 14, 2014, which was one week after joining the Board. In his “haste to complete and submit his 2014 Disclosure” form, he “overlooked and failed to include the WHREA as a source of income.” Respondent attempted to amend his mistake but was informed by the BS/BA that the forms were already “filed” and could not be amended; however, he was advised to make sure he completed the forms properly in the future.

Respondent further notes that, as a new Board member, Respondent attended training in March 2014, which “addressed various topics, but did not directly address conflicts of interest relating to union membership.” Respondent “directly inquired,” during the NJSBA training, if he “possessed any conflicts of interest as a teacher/WHREA official and member of the [Board] and, if so, what Respondent should do to avoid a violation.” Respondent asserts that he was advised by the NJSBA instructor that “due to Respondent’s role as a WHREA official[,] Respondent could not participate in any contract negotiations involving union members while on the [Board], but that it was permissible for him to vote on final contracts.” Respondent asserts that when Board counsel offered Respondent advice regarding his alleged conflict, he “rejected” Board counsel’s “opinion letter based upon what he perceived to be significant errors in the letter’s contents and [Board counsel’s] analysis.” Respondent maintains that he “physically removed [himself] during any and all contract negotiations that occurred during the 2014 and 2015 calendar years.” Respondent only voted on the final contracts as he was advised by the NJSBA.

Respondent argues that the “ALJ erred by failing to give due consideration to the mitigating factors surrounding Respondent’s violation.” Respondent asserts that the ALJ “seemingly examined the aggravating factor of Respondent’s extrinsic (rather than intrinsic) motivation to pursue corrective action.” Furthermore, the ALJ “characterized Respondent’s eventual disclosure and corrective actions as ‘a self-serving effort to save face.’” Furthermore, Respondent notes that the ALJ offered and concluded that “[R]espondent self-reported ... then acted in accordance ..., but only after his failure to report ... at a board meeting.” Respondent further argues that the ALJ’s “deficient analysis considers **none** of the numerous mitigating factors present in the record.”

Respondent claims that the ALJ “failed to consider Respondent’s lack of training in assessing [her] penalty.” This “mitigating factor should have been considered in assessing the penalty.” As previously stated, Respondent joined the Board and completed his Disclosure Statements in January 2014, but had not yet attended training (March 2014). Respondent asserts the ALJ should have considered this “mitigating factor” when issuing the penalty.

Respondent further claims that the ALJ “failed to consider properly Respondent’s efforts to rectify and remedy in assessing [her] penalty.” According to Respondent, the ALJ dismissed Respondent’s attempt to correct his Disclosure Statements and then future amendment “because they were seemingly prompted by board member discussion.” Respondent notes even if the ALJ’s reasoning were true, “it does not negate the corrective action.”

Respondent argues that the ALJ “failed to consider [his] contrition in assessing [her] penalty.” Respondent asserts that he admitted to his wrongdoing and explained that he inadvertently filed his Disclosure Statements incorrectly and the ALJ “did not acknowledge” Respondent’s “violation occurring a week into his Board membership” nor did the ALJ acknowledge that Respondent admitted his “error upfront and resigned from the Board ... before the ALJ even rendered her Decision.”

Based on these arguments, in addition to the defense that “a censure typically does not occur in non-disclosure instances,” Respondent asserts that the penalty of censure should not stand, and requests that the Commission modify the penalty to a reprimand.

### ***Petitioner’s Reply to Respondent’s Exceptions***

Petitioner maintains that the ALJ’s recommended penalty (censure) is appropriate, and should be adopted. As noted by the ALJ in the Initial Decision, Respondent’s omission was more than a mere oversight or misunderstanding. Petitioner also notes that the mitigating factors set forth in Respondent’s Exceptions were not contained in his Motion for Summary Decision and, even if they had been, those “factors” do not justify a less harsh penalty.

## **V. Analysis**

Following a careful, thorough, and independent review of the complete record, the Commission adopts ALJ Testa’s findings of fact except for the statement that a local education association (WHREA) is not an affiliate of the larger statewide education association (NJEA); adopts ALJ Testa’s legal conclusion that Respondent violated *N.J.S.A.* 18A:12-26 when he failed to disclose his WHREA income on his Disclosure Statements; and adopts ALJ Testa’s legal conclusion that Respondent did not violate *N.J.S.A.* 18A:12-24(a), *N.J.S.A.* 18A:12-24(b), *N.J.S.A.* 18A:12-24(c), and/or *N.J.S.A.* 18A:12-24(d) as alleged in the remaining counts of the Complaint (Counts 1-2, 4, and 6-7), but again rejects the statement that a local education association (WHREA) is not an affiliate of the larger statewide education association (NJEA).

### ***Findings of Fact***

Although not cited in the Initial Decision as a finding of fact, ALJ Testa states, in support of her legal conclusion that Respondent did not violate *N.J.S.A.* 18A:12-24(a), *N.J.S.A.* 18A:12-24(b), *N.J.S.A.* 18A:12-24(c), and/or *N.J.S.A.* 18A:12-24(d) when he voted on settlements between the EBOE and the EEA members, that “[C]omplainant’s argument that by being a member of the WHREA somehow makes that member an affiliate of the NJEA is not supported by any argument or documentation provided by ... [C]omplainant.” *Id.* at 15. To the extent that this statement could be construed as a finding of fact, the Commission rejects it.

In this regard, and as reflected in the documentation submitted as part of the proceedings below, the Commission finds that Petitioner has provided sufficient, competent, and credible evidence that a local education association (WHREA) is an affiliate of the larger statewide education association (NJEA). *See* Exhibit C and Exhibit F, appended to Petitioner’s Exceptions. Therefore, the Commission rejects ALJ Testa’s statement indicating otherwise.

### *Legal Conclusions*

As more fully detailed below, and following a careful, thorough, and independent review of the complete record, the Commission **adopts** the legal conclusion that Respondent violated *N.J.S.A.* 18A:12-26 when he failed to disclose his WHREA income on his Disclosure Statements; and **adopts** ALJ Testa's legal conclusion that Respondent did not violate *N.J.S.A.* 18A:12-24(a), *N.J.S.A.* 18A:12-24(b), *N.J.S.A.* 18A:12-24(c), and/or *N.J.S.A.* 18A:12-24(d) as alleged in the remaining counts of the Complaint (Counts 1-2, 4, and 6-7), but again **rejects** the statement that a local education association (WHREA) is not an affiliate of the larger statewide education association (NJEA).

The Commission agrees with ALJ Testa that, regardless of whether Respondent believed he was legally required or mandated to report his WHREA income on his Disclosure Statements, the fact remains that he failed to disclose a source of income – one which provided him with several thousands of dollars. If Respondent was unsure whether the WHREA was a “source of income,” he could have consulted with several different people – the Business Administrator/Board Secretary, the EBOE attorney, or even the Commission and/or its website. Instead of availing himself of these resources, Respondent chose not to disclose the WHREA, and his failure violates his statutory obligations and, more specifically, *N.J.S.A.* 18A:12-26. Accordingly, the Commission **adopts** the legal conclusion that Respondent violated *N.J.S.A.* 18A:12-26.

Although, as indicated above, the Commission rejects the statement that a local education association (WHREA) is not an affiliate of the larger statewide education association (NJEA), it nonetheless **adopts** ALJ Testa's legal conclusions that Respondent did not violate *N.J.S.A.* 18A:12-24(a), *N.J.S.A.* 18A:12-24(b), *N.J.S.A.* 18A:12-24(c), and/or *N.J.S.A.* 18A:12-24(d) as set forth in the remaining counts of the Complaint.

Even though Respondent was a member and officer of the WHREA, there is no evidence in the record which proves how that membership and officer status, in and of itself, even if not initially disclosed to the EBOE, violated any provision(s) of the Act. As with any other individual who may be part of and/or affiliated with the same statewide union as the local education association, Respondent was only precluded from participating in negotiations and discussions relative to the local education association, but there was no limitation on his ability to vote on or ratify an agreement(s) following negotiations. *See* A24-17. Without any factual evidence to prove that Respondent was inappropriately and unethically involved in a matter during negotiations or discussions, or how his involvement in the vote to appoint counsel violated *N.J.S.A.* 18A:12-24(b) or *N.J.S.A.* 18A:12-24(c), violations of the Act cannot be substantiated. As such, and while rejecting the statement that a local education association (WHREA) is not an affiliate of the larger statewide education association (NJEA), and because it is constrained by the record as it exists at the time Motions for Summary Decision were filed, the Commission **adopts** the legal conclusions that Respondent did not violate *N.J.S.A.* 18A:12-24(a), *N.J.S.A.* 18A:12-24(b), *N.J.S.A.* 18A:12-24(c), and/or *N.J.S.A.* 18A:12-24(d).

## VI. Decision

For the reasons more fully detailed above, the Commission adopts ALJ Testa's findings of fact except for the statement that a local education association (WHREA) is not an affiliate of the larger statewide education association (NJEA); adopts ALJ Testa's legal conclusion that Respondent violated *N.J.S.A.* 18A:12-26 when he failed to disclose his WHREA income on his Disclosure Statements; and adopts ALJ Testa's legal conclusion that Respondent did not violate *N.J.S.A.* 18A:12-24(a), *N.J.S.A.* 18A:12-24(b), *N.J.S.A.* 18A:12-24(c), and/or *N.J.S.A.* 18A:12-24(d) as alleged in the remaining counts of the Complaint (Counts 1-2, 4, and 6-7) but again rejects the statement that a local education association (WHREA) is not an affiliate of the larger statewide education association (NJEA).

## VII. Penalty

Based upon its determination that Respondent violated *N.J.S.A.* 18A:12-26, the Commission must now turn to the issue of penalty. In recommending a penalty of censure for Respondent's violation of *N.J.S.A.* 18A:12-26, ALJ Testa stated that Respondent "self-reported his non-disclosure and then acted in accordance with advice of the [Commission], but only after his failure to report his WHREA income was discussed at a [B]oard meeting." *Id.* at 16. Thus, Respondent's "conduct was more than a mere oversight or a misunderstanding of law." *Id.* In its Exceptions, and based on the facts and circumstances related to this case, Petitioner argues that the recommended penalty of censure is appropriate. Conversely, Respondent argues that a penalty of reprimand should be imposed.

In its review of the record, the Commission agrees with ALJ Testa that Respondent's alleged self-report of the non-disclosure was primarily motivated by external influences and, as such, finds that his non-disclosure cannot be categorized as benign. Although a penalty of reprimand can be appropriate when a school official fails to include a source of income on his Disclosure Statements, the Commission finds that willful non-disclosure, and failure to correct immediately upon realizing the error, requires a greater penalty. Consequently, the Commission adopts the recommended penalty of **censure**.

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.

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Robert W. Bender, Chairperson  
School Ethics Commission

Mailing Date: April 21, 2020

**Resolution Adopting Decision  
in Connection with C09-15**

*Whereas*, at its meetings on November 24, 2015, and December 15, 2015, the Commission voted to find probable cause for the allegations in Counts 1-2, 4, and 6-7; and

*Whereas*, on March 28, 2016, the remaining counts in the above-captioned matter were transmitted to the Office of Administrative Law (OAL); and

*Whereas*, at the OAL, both parties filed Motions for Summary Decision; and

*Whereas*, on January 27, 2020, the Honorable Elissa Mazzone Testa, Administrative Law Judge (ALJ Testa), issued an Initial Decision; and

*Whereas*, on February 28, 2020, Petitioner filed its Exceptions to the Initial Decision, and on March 9, 2020, Respondent filed his response to Petitioner's Exceptions; and

*Whereas*, on February 28, 2020, Respondent filed his Exceptions to the Initial Decision, and on March 6, 2020, Petitioner filed its response to Respondent's Exceptions; and

*Whereas*, at a special meeting on March 17, 2020, the Commission considered the full record in this matter, and discussed adopting ALJ Testa's findings of fact except for the statement that a local education association is not an affiliate of the larger statewide education association; adopting ALJ Testa's legal conclusion that Respondent violated *N.J.S.A.* 18A:12-26; and adopting ALJ Testa's legal conclusion that Respondent did not violate *N.J.S.A.* 18A:12-24(a), *N.J.S.A.* 18A:12-24(b), *N.J.S.A.* 18A:12-24(c), and/or *N.J.S.A.* 18A:12-24(d), but again rejecting the statement that a local education association is not an affiliate of the larger statewide education association; and

*Whereas*, at a special meeting on March 17, 2020, the Commission also discussed recommending a penalty of censure for Respondent's violation of *N.J.S.A.* 18A:12-26; and

*Whereas*, at its meeting on April 21, 2020, the Commission reviewed and voted to approve the within decision as accurately memorializing its actions/findings from its special meeting on March 17, 2020; 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 April 21, 2020.

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Kathryn A. Whalen, Director  
School Ethics Commission