

Before the School Ethics Commission
OAL Docket No.: EEC-017338-18
School Ethics Commission Docket No.: C48-18

Final Decision

**James Smith,
Complainant**

v.

**Emmanuel Capers,
Paterson Board of Education, Passaic County,
Respondent**

I. Procedural History

This matter arises from a Complaint that was filed on July 24, 2018, by James Smith (Complainant), alleging that Emmanuel Capers (Respondent), a member of the Paterson Board of Education (Board), violated the School Ethics Act (Act), *N.J.S.A.* 18A:12-21 et seq. More specifically, the Complaint alleges that Respondent 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(e), and *N.J.S.A.* 18A:12-24.1(f) of the Code of Ethics for School Board Members (Code).

After being served with the Complaint, Respondent filed a Motion to Dismiss in Lieu of Answer (Motion to Dismiss), and also alleged that the Complaint is frivolous. On September 12, 2018, Complainant filed a Response to Respondent's Motion to Dismiss and allegation of frivolous filing.

Thereafter, and at its meeting on October 30, 2018, the Commission voted to grant the Motion to Dismiss in part (as to the alleged violation of *N.J.S.A.* 18A:12-24.1(a)); deny the Motion to Dismiss as to all other allegations in the Complaint; find the Complaint not frivolous; deny Respondent's request for sanctions; direct the filing of an Answer to Complaint (Answer) as to the remaining allegations (*N.J.S.A.* 18A:12-24.1(c), *N.J.S.A.* 18A:12-24.1(e), and *N.J.S.A.* 18A:12-24.1(f)); and to transmit the matter to the Office of Administrative Law (OAL) following receipt of the Answer. On November 21, 2018, Respondent filed an Answer as directed, and the matter was transmitted to the OAL.

At the OAL, the above-captioned matter was assigned to the Honorable Kimberly A. Moss, Administrative Law Judge (ALJ Moss). *Initial Decision* at 1. Following hearings on October 3, 2019, November 4, 2019, and December 5, 2019, and as more fully detailed *infra*, ALJ Moss issued an Initial Decision detailing her findings of fact and legal conclusions. *Id.* at 2.

On December 23, 2019, the Commission acknowledged receipt of ALJ Moss's Initial Decision; therefore, the forty-five (45) day statutory deadline for the Commission to issue a Final Decision was February 6, 2020. Prior to February 6, 2020, 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 March 23, 2020.¹

On January 6, 2020, Complainant filed his Exceptions to the Initial Decision and, on January 13, 2020, Respondent filed his reply to Complainant's Exceptions.

Following the filing of Exceptions, and at the Commission's meeting on January 21, 2020, Complainant appeared and made statements during the public comment portion of the meeting regarding the Initial Decision issued by ALJ Moss. Complainant also provided the Commission with a written statement, along with related exhibits,² in connection with his public statements. As a result of Complainant's attendance and statements during the public comment portion of its meeting, the Commission voted to adjourn its continued review of the above-captioned matter, and to extend to Respondent, as a matter of fairness, the opportunity to provide public statement. Consequently, and in correspondence dated January 22, 2020, Respondent was advised that, pursuant to its statutory authority as set forth in *N.J.S.A. 18A:12-28*, Respondent was compelled to attend the Commission's meeting on February 25, 2020.³ The Commission also sought, and received, a second extension until April 10, 2020, to issue its final decision.

After receipt of correspondence from the Commission, Respondent (through counsel) requested a summary of Complainant's public statements from the meeting on January 21, 2020. In lieu of a summary, counsel for Respondent was provided with a copy of the written statement, and related exhibits, that Complainant provided to the Commission.

Consequently, and at its meeting on February 25, 2020, Respondent appeared, as did Complainant on his own initiative. Prior to receiving additional public comments regarding the above-captioned matter from either Complainant or Respondent, the Commission advised the parties that: the record was closed; because the record was closed, the Commission would neither be taking nor receiving testimony from either Complainant and/or Respondent; the Commission would not consider any comment(s) made by Complainant or Respondent and/or any document(s) submitted by Complainant or Respondent in its review of the above-captioned matter *unless* the comment(s) or document(s) was already memorialized in the record as developed during the underlying OAL hearing; and the Commission compelled Respondent's attendance so that he could avail himself, as Complainant did, of the opportunity to offer public statement about the above-captioned matter should he so desire. Following these advisements, Respondent (through counsel) provided a public statement, as did Complainant.

After Respondent (through counsel) and Complainant offered their respective public comments, the Commission adjourned to executive session to consider the full record in this

¹ Forty-five (45) days after February 6, 2020, was, technically, Sunday, March 22, 2020.

² Unless the substance of the written statement and/or the exhibits were part of the record, the information was not considered by the Commission.

³ Notwithstanding the language in its correspondence, the Commission was not compelling Respondent to testify, but rather affording him the opportunity to appear and offer public comment because Complainant had done so.

matter. To reiterate, and because the record was closed by ALJ Moss on December 5, 2019, the Commission did not include any comment(s) made by and/or any document(s) submitted by Complainant or Respondent during the public comment/statement of its meetings on January 21, 2020, or February 25, 2020, unless it was already part of the record. Thereafter, and at a special meeting on March 17, 2020, the Commission voted to adopt ALJ Moss's findings of fact; to reject the legal conclusion that Respondent did not violate *N.J.S.A.* 18A:12-24.1(c); to reject the legal conclusion that Respondent did not violate *N.J.S.A.* 18A:12-24.1(e); to reject the legal conclusion that Respondent did not violate *N.J.S.A.* 18A:12-24.1(f); and to recommend that Respondent be removed from his position as a Board member.

II. Initial Decision

In the Initial Decision dated December 23, 2019, and based on the documentary evidence as well as the testimony of Eric Crespo (Crespo), Joann Tsimpedes (Tsimpedes), William Gaurlich (Gaurlich), Jose Correa (Correa), Complainant, Oshin Castillo (Castillo), and Eileen Shaffer (Shaffer), ALJ Moss issued the following **findings of fact**:

- 1) Respondent is an elected member of the Board. He was a Board member in 2017, and served as a member of the curriculum committee. *Initial Decision* at 8.
- 2) Crespo was the Associate Chief Academic officer for the Paterson School District (District) in 2017-2018. *Id.*
- 3) In July 2017, there was a conference call involving Respondent, Crespo, and Tsimpedes, the Assistant Superintendent of Academic and Special Services, during which "Respondent brought to their attention a possible vendor ... that would provide free coding courses for juniors and seniors."⁴ *Id.* This "possible vendor" also sold educational and drone programs. *Id.*
- 4) On January 31, 2018, Respondent, another Board member (Jonathan Hodges (Hodges)), Crespo, Correa (the Director of Instructional Technology in the District), Gaurlich (a social studies teacher and Supervisor of College and Career Readiness), and Tsimpedes met with "a Woz U representative," Billy Garner (Garner). *Id.* at 2, 4, 5, and 8.
- 5) Garner "had previously known" Respondent. *Id.* at 8.
- 6) At the meeting on January 31, 2018, Garner "did a marketing presentation of Woz U's programs," including "programs that were not free which included coding for first to tenth grades." *Id.* at 8-9.
- 7) Woz U was also "concerned that the [District] juniors['] and seniors['] coding skills were not up to par," and "offered a program to get their skills up to par but that program was not free." *Id.* at 9.

⁴ At the time Respondent brought the "possible vendor" to the attention of the District's administration, the vendor was known as Accelerated Learning Pathways (ALP), but would later become Woz U. *Initial Decision* at 2, 8.

8) Also, at the meeting on January 31, 2018, “Gardner (sic) mentioned that there would be a seminar in Arizona that they could attend, which would be fully paid for by Woz U.” *Id.*

9) Prior to the January 31, 2018, meeting, Respondent sent Crespo a flyer regarding the seminar. *Id.*

10) Shaffer, the District Superintendent, directed Correa “to look into the seminar.” *Id.*

11) The District’s “legal department” informed Correa “that there might be a conflict,” informed Correa “to not let Woz U pay for the airfare and hotel,” and advised Correa “that Board members should follow the same protocol.” *Id.*

12) Shaffer advised Crespo “not to go to the seminar because [the District] did not have a relationship with Woz U and Woz U was a potential vendor.” *Id.*

13) Correa told Respondent that he (Correa) was not going to the seminar. *Id.*

14) Respondent told Correa “that he was going to the seminar and that if a vote came up on Woz U at the Board, he would recuse himself.” *Id.*

15) Shaffer spoke with Respondent “recommending that he not go to the seminar because Woz U could become a vendor for the Board.” *Id.*

16) No employee of the District went to the all-expense-paid seminar in Arizona. *Id.*

17) Respondent is not an employee of the District; he is an elected official. *Id.*

18) Shaffer told Castillo (Board President) that Respondent went to the all-expense-paid seminar sponsored by Woz U. *Id.*

19) After consulting with Shaffer and the Board attorney, Castillo requested an investigation. *Id.*

20) Complainant, a then “investigator” for the District, was contacted by Castillo and Shaffer and asked to “investigate [Respondent] going on the all-expense-paid seminar to Arizona sponsored by Woz U.” *Id.*

21) Respondent attended the seminar in Arizona from February 20, 2018, to February 23, 2018. *Id.*

22) Respondent declined to be interviewed by Complainant as part of his (Complainant’s) investigation. *Id.*

23) Complainant’s investigation included checking Respondent’s residency and voting record, although Shaffer told Complainant not to check Respondent’s voting records or to go to Respondent’s house. *Id.*

24) Complainant completed his investigation on March 27, 2018, and forwarded his report to Castillo, Shaffer, and Melissa Pierce (sic), the Passaic County Interim Executive County Superintendent (ECS). *Id.*

25) Castillo submitted Complainant's report to "the State Ethics Office, the Commissioner of Education, and other Board members." *Id.*

26) Complainant was "contacted by the ethics office because it needed a charge form." *Id.* at 9-10.

27) Complainant "completed and sent the charge form to the ethics office without consulting Castillo or Shaffer." *Id.* at 10.

28) The report completed by Complainant "was sent to the ethics office to determine if charges should be brought against [Respondent]." *Id.*

29) On August 28, 2018, "there was a resolution approved by the legal and business departments for the free use of the Woz U program," and Respondent recused himself from the vote. *Id.*

30) Woz U did not complete the vendor contract. *Id.*

31) Respondent "was not told by Castillo that a resolution was necessary for him to go to the seminar in Arizona." *Id.*

Based on the findings of fact as set forth above, ALJ Moss noted that Respondent brought Woz U to the attention of the District, ostensibly because Woz U had a program "that would offer free coding services to high school juniors and seniors." *Id.* According to ALJ Moss, as a member of the curriculum committee, Respondent's actions in "bringing to the District's attention a coding curriculum program" is "consistent with being a member of the curriculum committee." *Id.* The fact that Respondent brought Woz U "to the attention of the District is not framing policy or plans," but rather "providing information regarding a program that the District could consider using." *Id.* ALJ Moss also indicated that, "[t]here was no documentation or admission by Gardner (sic) or [Respondent] that [Respondent] and Gardner (sic) had a previous business relationship." *Id.*

In addition, Respondent "sent out a flyer regarding the all-expense-paid seminar in Arizona" and also "spoke to Correa and Crespo about whether they would attend the seminar." *Id.* at 11. However, ALJ Moss **concluded** that "[t]he flyer and the conversations do not violate *N.J.S.A.* 18A:12-24.1(c)."

As for the alleged violation of *N.J.S.A.* 18A:12-24.1(e), ALJ Moss noted that there was no testimony or evidence that Respondent made any personal promises to anyone connected to Woz U; Respondent's attendance at the "all-expense-paid seminar could have been done to gain a clearer understanding of the programs that Woz U offered"; Woz U was not a vendor of the Board at the time the seminar took place; Respondent's attendance at the seminar did not compromise the Board; and there was no testimony or evidence that Respondent "attempted to

sway the other Board members to vote on a resolution to have Woz U become a vendor for the District.” *Id.* at 11. In fact, the only Board member who testified was Castillo, and she “did not testify that [Respondent] tried to persuade her to vote for Woz [U] as a vendor.” *Id.* In addition, Respondent was not informed by Castillo that a resolution was necessary for him to attend the seminar in Arizona. *Id.* Finally, when a vote was held to determine whether Woz U should be a vendor, Respondent recused himself. *Id.* For these reasons, ALJ Moss **concluded** that Respondent did not violate *N.J.S.A.* 18A:12-24.1(e).

Finally, and regarding the alleged violation of *N.J.S.A.* 18A:12-24.1(f), ALJ Moss found that “[t]here was no evidence or documentation that Respondent had a prior business relationship with Woz U or anyone related to Woz U.” *Id.* at 12. Although Respondent and Garner “knew each other,” there was “no testimony as to how they knew each other or the extent of their relationship.” *Id.* There was also no evidence offered to show that Respondent surrendered his independent judgment to Woz U. *Id.* According to ALJ Moss, “[g]oing to the all-expense-paid seminar in Arizona and recusing himself on the vote to determine if Woz U would be a vendor to the Board without more evidence is not enough to show that [Respondent] surrendered his independent judgement to anyone.” *Id.*

ALJ Moss also noted that although the all-expense-paid seminar was offered to Respondent “and others in the District,” and that Respondent was “the only one from [the District] who went” to the all-expense-paid seminar, there is “no evidence that [Respondent] used the school to get the all-expense-paid seminar in Arizona.” *Id.* Therefore, ALJ Moss **concluded** that Respondent did not violate *N.J.S.A.* 18A:12-24.1(f).

Based on the above, ALJ Moss **ordered** that “the petition that [Respondent] violated *N.J.S.A.* 18A:12-24.1(c), [*N.J.S.A.* 18A:12-24.1](e), and [*N.J.S.A.* 18A:12-24.1](f) be **denied**.”

III. Exceptions

In **Complainant’s Exceptions to the Initial Decision** filed on January 6, 2020, he disputes ALJ Moss’s summary of the testimony provided by witnesses at the hearing. More specifically, Complainant disagrees with the summary of Crespo’s testimony, namely, “[Respondent] sent [Mr.] Crespo a flyer about the conference in Arizona prior to the January 31, 2018, meeting stating, ‘you should go to this.’” *Initial Decision* at 3. According to Complainant, “What was actually said in an email from [Respondent] dated January 30, 2018 at 8:46 pm to Mr. Eric Crespo ‘you guys need to be on this.’” Complainant maintains that “you should do this implies” that it is a recommendation, but how it was actually stated, in the email, does not suggest it is a recommendation.

Also, with regard to Crespo’s testimony, ALJ Moss found that “Crespo did not initially believe the free program was offered as a hook for the Board to buy other programs from Woz U that were not free.” *Id.* Complainant argues that in Crespo’s report, which is included in P-1, Crespo notes, “the additional products offered were at a cost and the focus of our January 31 meeting.” Complainant further notes that Crespo’s report states, “On February 2[,], I received a phone call from Jose Correa inquiring about my availability to attend the conference in Arizona. I declined any interest ... I communicated with, my Deputy Superintendent ... She informed both myself and Jose that the conference was a conflict of interest.” Complainant maintains that

after reading Crespo's report and speaking with him, Crespo believed that the "free program eventually would be used as a hook for offering a paid program."

Regarding Gaurlich's testimony, Complainant disputes ALJ Moss's summary that "Gaurlich was not offered an expense-free trip to the Arizona Seminar." *Id.* at 4. Complainant contends contrary to what ALJ Moss found, Gaurlich's official report (P-3) contains a statement which reads, "[Respondent] mentioned being interested in attending the Arizona conference and asked if I would be interested." *See*, P-3.

As for the summary of his own testimony, Complainant disputes ALJ Moss's statement that "[Complainant] does not know if Shaffer is Capers's boss." *Id.* at 6. Complainant notes that the District was a "State run district and in the process Superintendent Shafer would have the final say." Complainant asserts that "it is also ridiculous to think after being told by Superintendent Shafer to cooperate with all State agencies I would somehow decide to bring charges against [Respondent] on my own."

Finally, Complainant maintains "If this recommendation is allowed to stand without any penalty, it will virtually open up Pandora's Box to allow board members to accept free expense paid trips for vendors or potential vendors. Also, what chance would a private citizen have going up against top law firms."

In **Respondent's reply to Complainant's Exceptions** filed on January 13, 2020, he contends that "[a]lthough [C]omplainant purports to contest many of [ALJ] Moss's findings of fact, he actually takes issue with the testimony memorialized in [ALJ] Moss's opinion." Respondent further contends that ALJ Moss did not "find any facts with which [C]omplainant takes issue," and even if she did find such facts, "her legal analysis does not rest on or even mention them." Respondent argues that ALJ Moss's findings of fact and legal conclusions are "fully supported by the record" and, therefore, Respondent requests that the Commission adopt the Initial Decision.

IV. Analysis

For the reasons more fully detailed below, and following a careful, thorough, and independent review of the complete record, including all of the testimonial and documentary evidence in the record, the Commission **adopts** ALJ Moss's findings of fact, but **rejects** ALJ Moss's legal conclusion that Respondent did not violate *N.J.S.A.* 18A:12-24.1(c), *N.J.S.A.* 18A:12-24.1(e), or *N.J.S.A.* 18A:12-24.1(f). In rejecting ALJ Moss's legal conclusions, the Commission finds that Complainant has proven, by a preponderance of the credible evidence, that Respondent's conduct violated *N.J.S.A.* 18A:12-24.1(c), *N.J.S.A.* 18A:12-24.1(e), and *N.J.S.A.* 18A:12-24.1(f).

Summary of the Remaining Allegations in the Complaint

Complainant, then "Executive Director of School Security, Internal Investigations, Fleet Management, and Transportation" for the District, asserts that, in Respondent's capacity as a Board member, he (Respondent) attended an "unauthorized" conference in Scottsdale, Arizona, and all costs were paid by a District vendor or a potential District vendor. In the course of Complainant's investigation, he learned that the District's "security department" had transported

Respondent to the airport because it was believed to be an “authorized” and Board approved trip; however, when it was discovered to be an “unauthorized” trip, Respondent was told he would need to arrange for his own transportation from the airport. Complainant further states that Respondent had prior “business dealings” with the sales team of the vendor that were unrelated to the District. Complainant’s investigation also revealed that the Superintendent and Deputy Superintendent emailed several members of the District’s staff and specifically advised them not to attend the conference. When one of the recipients of this e-mail, Mr. Jose E. Correa (Director of Instructional Technology and Media Services), informed Respondent that he (Mr. Correa) was not attending the conference, Respondent purportedly replied, “I’m still going.” When Mr. Correa then advised Respondent that the District was “considering purchasing Woz U coding platform,” Respondent allegedly replied, “I will recuse myself from voting.” Ultimately, Respondent was the only District employee who chose to attend the conference without any formal approval by the Board.

Based on this information, Complainant alleges that Respondent violated *N.J.S.A.* 18A:12-24.1(c) because he had prior business with the sales team of the vendor and, as a result, had a conflict of interest which precluded him from attending the conference in his capacity as a Board member, and with all costs paid by the vendor; *N.J.S.A.* 18A:12-24.1(e) because due to his conflict of interest, his attendance (private action) compromised the Board; and *N.J.S.A.* 18A:12-24.1(f) because his independent judgment was compromised due to his prior business dealings and relationship with the vendor.

Violation of N.J.S.A. 18A:12-24.1(c)

N.J.S.A. 18A:12-24.1(c) requires a school board member to abide by the following: “I will confine my board action to policy making, planning, and appraisal, and I will help to frame policies and plans only after the board has consulted those who will be affected by them.” As set forth in *N.J.A.C.* 6A:28-6.4(a)(3), factual evidence of a violation of *N.J.S.A.* 18A:12-24.1(c) shall include evidence that Respondent took Board action to effectuate policies and plans without consulting those affected by such policies and plans, or took action that was unrelated to Respondent’s duty to (i) develop the general rules and principles that guide the management of the school district or charter school, (ii) formulate the programs and methods to effectuate the goals of the school district or charter school, or (iii) ascertain the value or liability of a policy.

Based on the testimonial and documentary evidence in the record, it is clear that, in his capacity as a Board member, Respondent took actions that were unrelated to his duties and responsibilities as a Board member in violation of *N.J.S.A.* 18A:12-24.1(c). Even if, as indicated by ALJ Moss, Respondent’s action in “bringing to the District’s attention a coding curriculum program [is] consistent with being on the curriculum committee,” his ensuing advocacy for the potential vendor, especially when Respondent had a pre-existing - yet not completely defined - relationship with a representative of the company is problematic. In this regard, and after alerting certain members of the District’s administration about the “free” courses that could be provided, Crespo reported that Respondent “encouraged the implementation of the product in [the District’s] schools in fall,” which was only a few months later. P-1 at 1. Crespo advised Respondent that, before any product could be implemented, a thorough analysis, among other things, would need to be completed. *Id.* Several months later, and immediately following a telephone conference between District administrators and the “potential vendor,” and which did not include Respondent, he (Respondent) “appeared at [Crespo’s] office,” “discussed the

conference call,” and “requested [that District administrators] inquire about a presentation at the Board Workshop meeting.” *Id.* In addition, and before members of the District’s administration could again meet with the potential vendor, Respondent “wanted to provide the rest of the [B]oard exposure to the product.” *Id.* at 2. Because this request was not made by the Department of Academic Services, but rather by Respondent, Crespo alerted the Chief of Staff about the request. *Id.*

It is also not reasonable to conclude that, even if “bringing to the District’s attention a coding curriculum program [is] consistent with being on the curriculum committee,” Respondent’s subsequent acceptance of and attendance at an all-expense-paid seminar in Arizona, at the expense of a “potential vendor,” falls within the scope of his duties and responsibilities as a Board member. There is no legitimate reason for an individual Board member to accept and attend an all-expense-paid seminar in order to learn about a product(s), especially when every other individual to whom the offer was extended, including the District administrators who are ultimately the ones responsible for identifying and implementing such products, relied on the advice of the legal department, or the Superintendent, and declined to accept and attend the all-expense-paid seminar. *Initial Decision* at 3-5, and 9. Individual Board members do not have a role in vetting potential vendors in this way, or recommending educationally-related products or services to the very people, namely the District’s educational professionals, who chose not to attend the all-expense-paid seminar. District administrators, and even Board members, who are interested in learning more about the services, courses, or program that a potential vendor can provide can do so in a myriad of ways, none of which, and critically important, require traveling across the country to attend a seminar that is paid for by the “potential vendor” at an estimated cost of several thousand dollars. P-6. Importantly, and although not admitted by Respondent, he recognized that his acceptance of, and attendance at, the all-expense-paid seminar constituted a conflict because he conceded he would recuse from any vote(s) regarding Woz U in the future. If acceptance of and attendance at the seminar was not a conflict, Respondent would not have acknowledged the need to recuse.

In short, by requesting that a course/program be implemented before it was fully analyzed by the District’s administration; requesting that a course/program be presented to the Board *before* the Department of Academic Services believed it was appropriate to do so; and accepting and attending an all-expense-paid-seminar in Arizona with the foresight that such acceptance and attendance would preclude him from being involved in any vote(s) regarding Woz U, Respondent took actions unrelated to his duties and responsibilities as a Board member. Accordingly, Commission **rejects** the legal conclusion that Respondent did not violate *N.J.S.A.* 18A:12-24.1(c).

Violation of N.J.S.A. 18A:12-24.1(e)

N.J.S.A. 18A:12-24.1(e) requires a school board member to comply with the following: “I will recognize that authority rests with the board of education and will make no personal promises nor take any private action that may compromise the board.” Pursuant to *N.J.A.C.* 6A:28-6.4(a)(5), factual evidence of a violation of *N.J.S.A.* 18A:12-24.1(e) shall include evidence that Respondent made personal promises or took action beyond the scope of his duties such that, by its nature, had the potential to compromise the Board.

For all of the reasons more fully enumerated above, Respondent's request that a course/program be implemented before it was fully analyzed by the District's administration; request that a course/program be presented to the Board *before* the Department of Academic Services believed it was appropriate to do so; and acceptance of and attendance at an all-expense-paid-trip to Arizona *after* he was told that at least one other District administrator was not attending; and recognition that his acceptance and attendance of the all-expense-paid seminar constituted a conflict (because he knew he would have to, and did, recuse from a vote(s) involving Woz U), constituted action beyond the scope of his duties as a Board member. Moreover, Respondent's actions could have compromised the Board's ability to contract with Woz U for free and/or cost-based programs, services, or courses, and could have compromised the public's opinion about the ethics and integrity of the Board when it comes to the appropriateness of accepting gifts from vendors, potential vendors, or from any entity which may provide or offer to provide goods or services to the Board. Because Respondent accepted and attended the all-expense-paid seminar in his capacity as a Board member, it could appear as if the Board had authorized or sanctioned his attendance when, in fact, the chief school administrator specifically recommended that Respondent not attend. *Initial Decision* at 9.

Therefore, the Commission **rejects** the ALJ's conclusion that Respondent did not violate *N.J.S.A.* 18A:12-24.1(e).

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

N.J.S.A. 18A:12-24.1(f) requires a school board member to abide by the following: "I will refuse to surrender my independent judgment to special interest or partisan political groups or to use the schools for personal gain or for the gain of friends." As set forth in *N.J.A.C.* 6A:28-6.4(a)(6), factual evidence of a violation of *N.J.S.A.* 18A:12-24.1(f) shall include evidence that Respondent took action on behalf of, or at the request of, a special interest group or persons organized and voluntarily united in opinion and who adhere to a particular political party or cause; or evidence that Respondent used the schools in order to acquire some benefit for himself, a member of his immediate family, or a friend.

Because (1) Respondent was offered the opportunity to attend an "all-expense-paid" seminar in Arizona from a potential vendor to the Board, (2) the offer was extended to Respondent because of his membership on the Board, and (3) Respondent, in his capacity as a member and representative of the Board, accepted and attended an all-expense-paid seminar that, as estimated by Complainant, cost several thousand dollars, it is beyond dispute that Respondent used his position as a member of the Board to acquire a benefit for himself, namely a "free" trip to Arizona. P-6.

Consequently, Commission **rejects** the legal conclusion that Respondent did not violate *N.J.S.A.* 18A:12-24.1(f).

V. Decision

For the reasons more fully detailed above, the Commission determines to **adopt** ALJ Moss's findings of fact; to **reject** the legal conclusion that Respondent did not violate *N.J.S.A.* 18A:12-24.1(c); to **reject** the legal conclusion that Respondent did not violate *N.J.S.A.* 18A:12-

24.1(e); and to **reject** the legal conclusion that Respondent did not violate *N.J.S.A.* 18A:12-24.1(f).

VI. Penalty

Based upon the conclusion that Respondent violated *N.J.S.A.* 18A:12-24.1(c), *N.J.S.A.* 18A:12-24.1(e), and *N.J.S.A.* 18A:12-24.1(f), the Commission must now turn to the issue of penalty. Pursuant to *N.J.S.A.* 18A:12-29, the Commission is authorized to recommend a penalty which ranges from reprimand, a non-public admonishment, to removal. The Commission recognizes that removal is the harshest form of penalty and, as such, reserves it for the most extreme of cases. In this case, the Commission believes that removal is the only penalty that can be recommended to the Commissioner of Education (Commissioner).

In its review of the record, it is clear to the Commission that Respondent was overly involved in ensuring that the District used a service(s) or program(s) offered by Woz U. As discussed in greater detail above, it was Respondent who recommended the “free” course/program to the District’s administrators; it was Respondent who asked for the course/program to be implemented before it had been analyzed by the appropriate District’s administrators; it was Respondent who asked for the course/program to be presented to the full Board *before* District’s administrators thought it appropriate to do so; it was Respondent who had a “relationship” with the representative from Woz U; it was Respondent, and only Respondent, who accepted and attended an all-expense-paid seminar in Arizona to learn more about products and services that could be implemented in New Jersey; and it was Respondent who recognized that his acceptance and attendance at the all-expense-paid seminar created a conflict requiring recusal. It is also worth noting that at the time Respondent accepted and attended the all-expense-paid seminar in Arizona, he had already vigorously lobbied for the courses/programs offered by Woz U to be implemented in the District and, therefore, there was no justifiable reason for him to accept and attend the seminar to “learn more” – Respondent had already been convinced that the courses/programs were needed in the District and, as such, had already made his decision.

Moreover, acceptance of anything that is of any value, whether a good, product, or service, from any entity that is currently providing, could provide, or may theoretically provide a good, product, or service to the board of education on which an individual serves is the epitome of unethical. In this case, Woz U was not unknown to the Board or the members of its administrative staff, as it had already provided, *as a result of* Respondent’s referral, at least one live presentation in the District about the service(s) it could provide. In addition, and following this presentation, members of the District’s administration (Crespo and Graulich) were actively communicating with Woz U, via e-mail, about how, and if, the company could serve the needs of the District’s students. P-3. Of particular importance, these communications occurred prior to the start of the all-expense-paid seminar.

Respondent’s acceptance of and attendance at the all-expense-paid seminar in Arizona is exacerbated by the fact that the chief school administrator specifically recommended that Respondent not attend the seminar; at least one other administrator advised Respondent he would not attend the seminar; and Respondent recognized that his acceptance and attendance at the all-expense-paid seminar created a conflict because he agreed to, and did, recuse from any vote(s)

involving Woz U. Furthermore, Respondent had ample time between the time the all-expense-paid seminar was offered (January 31, 2018), and the date of the seminar (February 20, 2018), to fully vet and receive clearance to attend (which he ultimately did not receive). Instead, and when the chief school administrator recommended that he not attend, Respondent blatantly disregarded her recommendation, and created a self-serving solution, namely recusal after acceptance of a gift.

If the Commission does not recommend the harshest form of penalty available, namely removal, neither board members nor administrators would be deterred from accepting a gift, of whatever value, from a current vendor, prospective vendor, or hypothetical vendor. Instead, board members and administrators would merely have to weigh the cost associated with a reprimand, censure, or even a suspension, with the benefit of receiving a gift. In other words, if school officials are permitted to accept even a nominal gift without the threat of removal, there is nothing which would prohibit the unethical acceptance of gifts. Consequently, the Commission recommends a penalty of *removal*.

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: March 17, 2020

***Resolution Adopting Decision
in Connection with C48-18***

Whereas, at its meeting on October 30, 2018, and following its ruling on Respondent's Motion to Dismiss in Lieu of Answer, the School Ethics Commission (Commission) voted to transmit the remaining allegations to the Office of Administrative Law (OAL) for a plenary hearing; and

Whereas, following hearings on October 3, 2019, November 4, 2019, and December 5, 2019, the Honorable Kimberly A. Moss, Administrative Law Judge (ALJ Moss), issued an Initial Decision dated December 23, 2019; and

Whereas, in the Initial Decision, it was determined that Respondent did not violate *N.J.S.A.* 18A:12-24.1(c), *N.J.S.A.* 18A:12-24.1(e), or *N.J.S.A.* 18A:12-24.1(f); and

Whereas, on January 6, 2020, Complainant filed Exceptions; and

Whereas, on January 13, 2020, Respondent filed a Reply to Complainant's Exceptions; and

Whereas, at its meeting on January 21, 2020, the Commission voted to table continued discussions; and

Whereas, at its meeting on February 25, 2020, the Commission discussed adopting ALJ Moss's findings of fact; rejecting the legal conclusion that Respondent did not violate *N.J.S.A.* 18A:12-24.1(c), *N.J.S.A.* 18A:12-24.1(e), or *N.J.S.A.* 18A:12-24.1(f); and recommending a penalty of removal; and

Whereas, at a special meeting on March 17, 2020, the Commission reviewed and voted to approve the within decision as accurately memorializing its actions/findings from its meeting on February 25, 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.

Robert W. Bender, Chairperson

I hereby certify that this Resolution was duly adopted by the School Ethics Commission at a special meeting on March 17, 2020.

Kathryn A. Whalen, Director
School Ethics Commission