

208-21 SEC
SEC Dkt No. C71-18
OAL Dkt. No. EEC 09014-19
Agency Dkt. No. 6-5/21A

New Jersey Commissioner of Education

Final Decision

In the Matter of Christopher Treston,
Board of Education of Randolph Township,
Morris County.

This matter involves an appeal of the School Ethics Commission’s (Commission) April 27, 2021 decision that appellant Christopher Treston, a member of the Randolph Township Board of Education (Board), violated *N.J.S.A. 18A:12-24(b)* and *N.J.S.A. 18A:12-24.1(e)* of the School Ethics Act (Act) by publishing an Op-Ed, in advance of a Board election, that endorsed certain candidates and advocated against another candidate. Having carefully reviewed the Commission’s decision and the record in its entirety, the Commissioner finds that the Commission’s decision finding that appellant violated the Act is supported by sufficient, credible evidence, and that appellant failed to establish that the decision is arbitrary, capricious, or contrary to law. *N.J.A.C. 6A:4-1.1(a)*. However, the Commissioner concludes that the appropriate penalty is reprimand.

Appellant published an Op-Ed wherein he endorsed four candidates for an upcoming Board election – while also advocating against the election of Eliza Schlieffstein – in what he admitted was an attempt to influence voters. In so doing, appellant used a disclaimer that stated, “The author is writing this endorsement on his own personal behalf. His opinions are his own.” Appellant did not seek the approval of the Board or its counsel before publishing the

Op-Ed. Thereafter, Schlieffstein filed a complaint against appellant with the Commission. The Commission granted appellant's motion to dismiss some of the allegations; found probable cause that appellant violated *N.J.S.A.* 18A:12-24(b), *N.J.S.A.* 18A:12-24.1(e), and *N.J.S.A.* 18A:12-24.1(f); and transmitted those allegations to the Office of Administrative Law (OAL). Following a hearing at the OAL, the Administrative Law Judge (ALJ) concluded that appellant violated *N.J.S.A.* 18A:12-24(b) and *N.J.S.A.* 18A:12-24.1(e) and recommended a penalty of reprimand.¹ In its April 27, 2021 decision, the Commission adopted the ALJ's findings of fact and legal conclusions but modified the recommended penalty to a censure.

In his appeal and exceptions, appellant argues that the disclaimer included with his Op-Ed was sufficient to identify his endorsement as his personal view and that the Op-Ed was a permissible exercise of his fundamental right to free speech. According to appellant, since he stated that he was making the endorsement on his own behalf and that his views were his own, requiring additional language indicating that his views were not those of the Board would be superfluous. Appellant further contends that the substance of the Op-Ed does not violate the Act, because expressing his personal opinions does not have the potential to compromise the Board and does not provide any advantage to his endorsed candidates. Appellant claims that it was reasonable for his Op-Ed to include references to his experience as a Board member and that doing so does not render his disclaimer unclear or insufficient. Finally, appellant argues that, if he is found to have violated the Act, the appropriate penalty is reprimand as recommended by the ALJ – for reasons similar to those outlined in the Initial Decision.

In reply, the Commission argues that its decision that appellant violated *N.J.S.A.* 18A:12-24(b) and *N.J.S.A.* 18A:12-24.1(e) was reasonable and supported by the record.

¹ The ALJ also concluded that the Commission failed to establish that appellant violated *N.J.S.A.* 18A:12-24(f), and the Commission adopted that conclusion in its April 27, 2021 decision.

The Commission reiterates that appellant's disclaimer was insufficient, because the content of the Op-Ed created the appearance that appellant's endorsements were also those of the Board, due to multiple references to his position and Board matters generally, as well as usage of the terms "we" and "our" throughout his writing. The Commission notes that while appellant has a right to free speech to express his own opinion, he must not convey the impression that his opinion is the Board's opinion. The Commission also contends that, in light of the proliferation of this type of electronic publication, a penalty of censure is appropriate and necessary to underscore that board members speaking as private citizens must do so clearly and unambiguously.

Upon a comprehensive review of the record, the Commissioner finds that the decision of the Commission that appellant violated *N.J.S.A. 18A:12-24(b)* and *N.J.S.A. 18A:12-24.1(e)* is supported by sufficient credible evidence, and appellant has not established that the Commission's decision is arbitrary, capricious, or contrary to law. The purpose of a disclaimer is to prevent board members from compromising the board of education by causing reasonable confusion among the public about whether the board member's statement is made as a private citizen or as a public official. Here, while appellant's disclaimer noted that his views were his own, he failed to make clear that the views expressed were not those of the Board. The Commissioner disagrees with appellant that such language would be superfluous. While the precise language of a disclaimer is in the board member's discretion, the SEC has indicated that disclaimers must make clear that the opinions are not those of the board. *See* SEC Advisory Opinion A03-07, April 2, 2007 (statements should indicate that they are "neither authorized by nor written on behalf of the board"); A36-14, October 29, 2014 (publications endorsing candidates for election to a board of education "must include a disclaimer, making it clear that

your endorsement is as a private citizen and not as a member of the Board or on behalf of the entire Board.”).

The Commissioner notes that in addition to appellant’s disclaimer, which appears at the beginning of the Op-Ed, the publication also includes a disclaimer at the end, stating, “The opinions expressed herein are the writer’s alone, and do not reflect the opinions of TAPinto.net or anyone who works for TAPinto.net. TAPinto.net is not responsible for the accuracy of any of the information supplied by the writer.” Viewed in combination, it would not be unreasonable for a member of the public to conclude that the first disclaimer, written by appellant, was meant to distance the website – not the Board – from appellant’s endorsements. Furthermore, a clear indication that a statement is not made on behalf of the Board provides clarity to the public when the substance of the statement repeatedly references appellant’s position on the Board, and Board matters in general.

As detailed by both the ALJ and the SEC, because the Op-Ed created the appearance that the entire Board endorsed certain candidates and opposed others, appellant’s actions conferred an unwarranted advantage upon the candidates he endorsed. *N.J.S.A.* 18A:12-24(b). Additionally, appellant’s actions were outside the scope of his duties as a Board member, and they had the potential to compromise the Board. *N.J.S.A.* 18A:12-24(e); *N.J.A.C.* 6A:28-6.4(a)(5).²

In support of its recommendation for a penalty of censure, the SEC relied on four cases. First, in *Kwapniewski v. Curioni, Lodi Board of Education, Bergen County*, SEC Docket No. C70-17, decided December 18, 2019 (*Curioni*), *aff’d* Commissioner January 23, 2020, the board

² Appellant argues that the ALJ incorrectly found that his actions had the potential to compromise the Board because they were outside the scope of his duties. While appellant is correct that these are individual criteria, and both must be proven to find a violation of *N.J.S.A.* 18A:24.1(e), the Commissioner finds that both criteria have been proven here.

member received a six-month suspension after repeatedly making personal attacks against a teacher on blog posts over a two-month period by posting inaccurate information about her salary, questioning her teaching qualifications and honesty, calling her names, and posting a picture of the street where she lives. Despite inclusion of a disclaimer, the board member repeatedly referenced his status on the Board. Here, the SEC noted that while appellant only authored one Op-Ed rather than a series of blog posts, the appearance that the Board advocated against Schliefsstein was impactful on the public, and appellant was well aware of his impact.

Second, in *Dunbar Bey v. Brown, Camden Board of Education, Camden County*, SEC Docket No. C25-11, decided December 21, 2011 (*Brown*), the SEC recommended a penalty of censure after a board member did not remove the superintendent's picture which had appeared under a Facebook post referencing local terrorists, but the Commissioner found a reprimand was more appropriate due to the lack of prior violations. Here, the SEC explained that appellant's conduct was more deliberate and egregious than the action in *Brown* and warrants a penalty of censure.

Third, in *Fleres v. Zhong, West Windsor-Plainsboro Board of Education, Mercer County*, SEC Docket No. C17-18, decided May 3, 2019 (*Zhong*), a board member disclosed confidential information about an incident involving a student to his immediate family, and the information then spread. The SEC recommended a penalty of censure for the first-time offense, and the Commissioner agreed. Here, the SEC noted that, like in *Zhong*, a penalty greater than a reprimand is appropriate for a first-time offense.

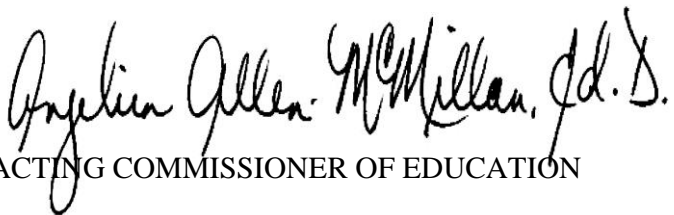
In a recent matter that also involved the use of disclaimers, a board member attached his name to a political flyer and deliberately chose to indicate that he was a member of the board of education, without including any disclaimer to indicate that his views were not those of the board. *Atif Nazir v. Nitang Patel, Bd. of Educ. of the Twp. of Piscataway*, Commissioner Decision No. 164-21SEC (August 12, 2021). His violations were not inadvertent; he purposefully referenced his position on the board to support his political agenda. In that matter, the Commissioner agreed with

the SEC that censure was the appropriate penalty, despite the fact that it was a first offense, because the board member's actions were more egregious than those in *Brown, supra*.

Upon review of appellant's actions, the Commissioner disagrees with the SEC that censure is the appropriate penalty in the instant matter, and instead concurs with the ALJ that a reprimand is the appropriate penalty. While appellant's disclaimer was insufficient, the record demonstrates that he did attempt to represent his views as his own. The Commissioner finds that appellant's behavior does not rise to the same level as that of the board member at issue in *Nazir, supra*, and, accordingly, a lesser penalty of reprimand is appropriate.

Accordingly, appellant is hereby reprimanded as a school official found to have violated the School Ethics Act.

IT IS SO ORDERED.³


ACTING COMMISSIONER OF EDUCATION

Date of Decision: September 30, 2021
Date of Mailing: September 30, 2021

³ This decision may be appealed to the Appellate Division of the Superior Court pursuant to *N.J.S.A.* 18A:6-9.1. Under *N.J.Ct.R.* 2:4-1(b), a notice of appeal must be filed with the Appellate Division within 45 days from the date of mailing of this decision.