

116-24
SEC Dkt. No. C09-20
OAL Dkt. No. EEC 11269-20
Agency Dkt. No. 10-8/23A

New Jersey Commissioner of Education
Final Decision

In the Matter of S.J.,
Englewood Cliffs Board of Education,
Bergen County

This matter involves an appeal of the School Ethics Commission's (SEC) August 22, 2023, determination that appellant – a member of the Englewood Cliffs 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 attending multiple executive sessions at which the Board discussed a matter involving a member of appellant's immediate family (Matter).¹ The SEC recommended that appellant be censured for the violation. Having carefully reviewed the SEC's decision and the record in its entirety, the Commissioner finds that the SEC's decision 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:4-4.1(a)*. However, the Commissioner concludes that the appropriate penalty is a reprimand.

Appellant attended four executive session meetings where the Matter was discussed. According to appellant's certification, she was informed prior to the first meeting that the Matter

¹ During the proceedings at the Office of Administrative Law, the parties entered into a Consent Order sealing the record. While the Commissioner's decisions are public and therefore this decision cannot be under seal, the Commissioner finds that it is appropriate to protect the subject matter that the parties agreed was confidential. Accordingly, the details of the underlying matter discussed by the Board during the executive sessions will not be discussed herein.

would be discussed in executive session. Upon learning this information, she consulted with the Superintendent, Dr. Jennifer Brower, as to whether or not she should attend. The Superintendent indicated that she had consulted with Board counsel, who had advised that appellant was not required to leave the room because the discussion would not include the names of the individuals at issue. Appellant attended every executive session where the Matter was discussed, with the exception of the last meeting. At that meeting, Board counsel asked appellant to recuse herself from executive session, which she did. The Board voted to dismiss the Matter in its public session later in the meeting. However, prior to a written determination being issued to the parties involved in the Matter, appellant's husband sent an email to the Board enclosing additional information, causing the Matter to be reopened. Despite this new information, the Matter was later dismissed for a second time.

In her appeal to the Commissioner, appellant argues that the Matter was dismissed by the Board, such that she received no advantage from her presence in the executive sessions, nor did she influence Board members or district personnel in her favor. According to appellant, her husband, of his own accord, sent correspondence to the Board presenting additional information resulting from the Board's public vote dismissing the Matter. Appellant contends that the appearance of impropriety alone is not sufficient to justify the finding that she violated the Act. Finally, appellant argues that if she is found to have violated the Act, her actions were *de minimus* and no penalty is warranted, particularly given her defense that she relied on the advice of Board counsel that she could remain in the executive session as long as she did not vote or participate in any discussions. In the alternative, appellant urges the Commissioner to issue the lower penalty of a reprimand.

In opposition, the SEC argues that the Act does not require that a board member succeed in securing unwarranted benefits, but only that she attempt to do so, and the fact that the Board dismissed the Matter is inconsequential; an attempt to secure an advantage can reasonably be inferred from her presence alone. According to the SEC, appellant's spouse's correspondence specifically responded to the reasoning behind the Board's dismissal of the matter, which was only presented in executive session. The SEC contends that *N.J.S.A. 18A:12-22(a)* explicitly requires Board members to avoid conduct "which creates a justifiable impression among the public that [its] trust is being violated." Finally, the SEC argues that appellant's defense regarding the advice of counsel is unsubstantiated, and a penalty of censure is appropriate.

Upon a comprehensive review of the record, the Commissioner finds that the SEC's determination that appellant is in violation of the Act is supported by sufficient credible evidence, and appellant has not established that the SEC's decision is arbitrary, capricious, or contrary to law. *N.J.S.A. 18A:12-24(b)* prohibits a board member from using or attempting to use his official position to secure unwarranted privileges, advantages or employment for himself, members of his immediate family or others. "The determination of whether a particular interest is sufficient to disqualify a board member is necessarily factual in nature and depends upon the circumstances in each case... Absent controlling authority, the decision in issue is dictated by a practical feel for the situation.... An actual conflict of interest is not the decisive factor, nor is 'whether the public servant succumbs to the temptation,' but rather whether there is a potential for conflict." *Friends Retirement Concepts v. Bd. of Educ. of the Borough of Somerville*, 356 N.J. Super. 203, 214 (internal citations omitted).

N.J.S.A. 18A:12-24.1 (e) states that the Board member “will recognize that authority rests with the boards of education and will make no personal promises nor take any private action that will compromise the board.” *See also Messner v. Gray, 2016 N.J. Super. Unpub. Lexis 703* (App. Div. Mar. 31, 2016). In *Messner*, a board member taped part of an executive session and shared it with her attorney. The SEC found this action violated *N.J.S.A. 18A:12-24.1 (e)* because Gray “took private action, or action that was outside the scope of her duties as a Board member when she intended to and did disclose the deliberations to two other third parties who would not otherwise have been privy to the Board's deliberations.” *Id.* at *7. The SEC further concluded that Gray's action was of “such a nature that it had the potential to compromise the Board.” *Id.* at *5. The Appellate Division agreed that Gray had violated the Act, concluding that “Gray's decision to further her own, purely private purposes had the potential to, and did, compromise the Board's ability to conduct its business in a lawfully convened executive session.” *Id.* at *11.

During executive session on September 4, 2019, the Board discussed the merits of the Matter, and the Board attorney stated that there was insufficient evidence to support the claim made by appellant’s family member. Later that evening, appellant’s spouse sent an email to the Superintendent disagreeing with the Board’s findings. The next day, prior to receiving the Board’s written determination, appellant’s spouse presented “new information” that resulted in the Matter being reopened at the next Board meeting. Appellant argues that the Matter was dismissed in public session at the September 4, 2019 board meeting, which alone triggered the email from her husband indicating his opposition to the determination, and that he volunteered information of his own accord. Appellant states in her certification that she never requested that the Matter be reopened or that her husband send an email in an effort to have the case reopened

or secure a favorable outcome. However, appellant's certification does not specifically assert that she kept details of the executive session confidential, and the new information that her husband provided to the Superintendent responded to the findings that were discussed in executive session, which were not available to the other individuals involved in the Matter. Such conduct indicates that appellant's presence in executive session compromised the Board's confidentiality and secured an unwarranted advantage for appellant's family, regardless of the ultimate outcome of the Matter. The Commissioner therefore affirms the SEC's conclusion that appellant violated *N.J.S.A. 18A:12-24(b)* and *N.J.S.A. 18A:12-24.1 (e)*.

Considering the evidence before it, the SEC imposed a penalty of censure. However, the Commissioner concludes that due to appellant's reliance on the advice of counsel, the penalty of reprimand is more appropriate. The Appellate Division has previously addressed charges of ethical violations by public officials acting on advice of counsel. *In re Zisa*, 385 *N.J. Super.* 188 (App. Div. 2006). The mayor in question in *Zisa* relied on the advice of counsel regarding his personal involvement in a real estate deal involving the municipality he represented. In examining the facts, the Appellate Division considered four prerequisites for an advice of counsel defense:

1. That the approval or advice was received prior to the action being taken.
2. That the individual who offered the advice or approval relied upon possessed authority or responsibility with regard to ethical issues.
3. That the individual seeking advice or approval made a full disclosure of all pertinent facts and circumstances.
4. That the individual complies with the advice received, including any restrictions it might contain.

Id. at 198-199 (internal citations omitted). *See also In the Matter of Marilyn Roman and Sudhan Thomas, and Jersey City Bd. of Educ., Hudson Co.*, slip op. at 12 (App. Div. Dec. 21, 2023).

Here, appellant has met all four prerequisites: appellant sought approval from the Superintendent prior to attending the meeting; the Superintendent advised that she had spoken to counsel and that appellant could attend but not vote; the Superintendent and the Board attorney were aware that appellant's family member was involved in the Matter; and appellant complied with the request to leave the fourth meeting when asked. Therefore, the Commissioner concludes that appellant's reliance on the advice of Board counsel is a valid defense in this matter. The Commissioner concludes that a penalty is nonetheless warranted, given that petitioner's actions resulted in an informational advantage concerning the details of the Matter, including the rationale behind the Board's decision, which was not afforded to the other participants in the Matter. Therefore, in light of the seriousness of appellant's actions, as mitigated by the advice of defense counsel, the Commissioner finds that in this instance, the 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.²



ACTING COMMISSIONER OF EDUCATION

Date of Decision: February 20, 2024

Date of Mailing: February 22, 2024

² 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.

Before the School Ethics Commission
OAL Docket No.: EEC-11269-20
SEC Docket No.: C09-20
Final Decision

I/M/O S.J.,
Englewood Cliffs Board of Education, Bergen County
Respondent

I. Procedural History

The above-captioned matter arises from a Complaint that was filed with the School Ethics Commission (Commission) on February 18, 2020,¹ by Edmond Duda (Complainant), a member of the Englewood Cliffs Board of Education (Board), alleging that S.J. (Respondent), also a member and President of the Board, violated the School Ethics Act (Act), *N.J.S.A. 18A:12-21 et seq.*, when she attended multiple executive sessions while the Board discussed a matter involving a member of her immediate family. More specifically, the Complaint alleges that Respondent violated *N.J.S.A. 18A:12-24(a)* in Counts 1-4, *N.J.S.A. 18A:12-24(b)* in Counts 1-4, as well as *N.J.S.A. 18A:12-24.1(e)* of the Code of Ethics for School Board Members (Code) in Counts 3-4.

On March 11, 2020, Respondent filed a Motion to Dismiss in Lieu of an Answer (Motion to Dismiss), and also alleged that the Complaint is frivolous. On June 22, 2020, Complainant filed a response to the Motion to Dismiss and allegation of frivolous filing. As part of his response to the Motion to Dismiss and allegation of frivolous filing, Complainant voluntarily withdrew the alleged violations of *N.J.S.A. 18A:12-24(a)* in Counts 1-4.

At its meeting on August 25, 2020, the Commission voted to adopt a decision accepting the voluntary withdrawal of the alleged violations of *N.J.S.A. 18A:12-24(a)* in Counts 1-4; finding that the remaining allegations in the Complaint were timely filed; denying the Motion to Dismiss as to all other allegations; finding the Complaint not frivolous; denying Respondent's request for sanctions; and directing Respondent to file an Answer to Complaint (Answer).

Following the adoption of the Decision on the Motion to Dismiss, Respondent submitted a request for the Commission to reconsider its decision. After review of the submissions filed by both Respondent and Complainant, the Commission denied Respondent's request at its meeting on September 29, 2020. Respondent then filed an Answer on October 13, 2020, as directed.

Thereafter, at its meeting on November 24, 2020, the Commission voted to find probable cause for all of the remaining allegations in this Complaint. Based on its finding of probable

¹ On February 18, 2020, Complainant filed a deficient Complaint; however, on March 9, 2020, Complainant cured all defects and filed an Amended Complaint that was deemed compliant with the requirements detailed in *N.J.A.C. 6A:28-6.3*.

cause, the Commission voted to transmit the within matter to the Office of Administrative Law (OAL) for a hearing and, pursuant to *N.J.A.C. 6A:28-10.7(b)*,² the attorney for the Commission (Petitioner) was charged with prosecuting the remaining allegations in the Complaint.

At the OAL, the parties entered into a Consent Order to Seal the matter on November 10, 2021. Following Petitioner's motion for summary decision, the Administrative Law Judge (ALJ) issued an Initial Decision on April 19, 2023. Both Petitioner and Respondent filed Exceptions to the Initial Decision, in accordance with *N.J.A.C. 1:1-18.4*.

At its meeting on July 25, 2023, the Commission considered the full record in this matter. Thereafter, at its meeting on August 22, 2023, the Commission voted to adopt the Initial Decision's findings of fact, legal conclusions that Respondent violated *N.J.S.A. 18A:12-24(b)* in Counts 1-4 and *N.J.S.A. 18A:12-24.1(e)* in Counts 3-4, and voted to modify the recommended penalty of reprimand in favor of censure.

II. Consent Order to Seal

On November 10, 2021, the ALJ entered a Consent Order to Seal (Consent Order). In the Consent Order, the parties agreed upon, and the ALJ ordered:

1. The Clerk of the OAL is hereby directed to change the caption in this matter to "In the Matter of S.J."
2. All records produced or utilized in this matter, whether between the parties or to or from the [OAL], shall be done so under seal and marked "ATTORNEYS' EYES ONLY."
3. Any requests to non-parties or communications with non-parties, must not disclose the existence of the confidential underlying matter/issues unless there is an independent basis to know that those non-parties are already aware of the confidential underlying matters and Respondent's connection to same, and also provided that any such parties agree, in writing, that they understand and agree to be bound by the confidentiality provisions in this Order.
4. This matter shall be sealed until such a time that the parties mutually agree in writing that it may be unsealed, and the Office of Administrative Law enters an order unsealing the matter.

Pursuant to *N.J.A.C. 1:1-14.1(c)*, when sealing a record, the ALJ "must specify the consequences of such an order to all material in the case file including any evidence, the stenographic notes or audiotapes and the initial decision. The treatment of testimony or exhibits shall be on such terms as are appropriate to balance public and private rights or interests and to preserve the record for purposes of review. The judge shall also indicate what safeguards shall be imposed upon the preparation and disclosure of any transcript of the proceedings." With the

² This citation refers to the regulation that was in effect at the time of the probable cause determination.

entry of the Consent Order, the ALJ did not provide the required specificity as to which aspects of the record would be sealed or the necessary analysis balancing the public and private rights or interests.

However, in reviewing the language of the Consent Order, the Commission finds that the scope of the Consent Order applies to “[a]ll records produced or utilized in this matter,” and therefore, does not apply to its decision. Moreover, the recommended penalty in this matter is a censure, which is inherently public, and therefore, the decision cannot be under seal. As such, the within Final Decision of the Commission will be a public decision. The Commission nevertheless aims to protect the subject matter that the parties agreed was confidential. In doing so, the Commission recognizes the public and private interests and rights at stake in this case. Accordingly, even though the Commission’s decision is public, the Commission’s decision does not discuss the details of the underlying matter before the Board that supported the Complaint.

III. Initial Decision

Prior to executive session at the Board meeting on August 12, 2019, Respondent was informed that a matter involving an immediate family member would be discussed in executive session. *Initial Decision* at 2. According to Respondent, she discussed the matter with the Superintendent and in turn, Respondent stated the Superintendent had spoken with Board counsel, who also according to Respondent, indicated that Respondent could attend the executive session, but could not vote on the matter. *Ibid.* The other Board members were not aware that the discussion during executive session involved a member of Respondent’s family. *Ibid.*

Prior to the September 4, 2019, Board meeting, Respondent was notified that the matter involving her family member would again be discussed in executive session. *Ibid.* During executive session, Board counsel discussed the details of the matter and stated there was insufficient evidence to support the action. *Ibid.* While Respondent abstained from voting on the matter, the Board voted 8-0-1, to dismiss the matter. *Ibid.* Later that evening, before receiving a copy of the Board’s decision, Respondent’s spouse emailed the Superintendent indicating that he disagreed with the findings and sent a follow-up email the next day providing “new information” to the Superintendent. *Id.* at 2-3.

Prior to the October 7, 2019, Board meeting, Respondent spoke with Englewood Cliffs School District (District) personnel regarding the matter, and at the Board meeting, the personnel indicated that the matter would be reopened due to new information. *Id.* at 3. Notably, the school officials who were presenting knew the identity of the individual involved and the relationship to Respondent.

The matter was discussed again at the November 4, 2019, Board meeting. During executive session, Board counsel asked Respondent to leave the meeting, and she complied, which first alerted Board members to Respondent’s personal connection to the matter being discussed. *Ibid.* Again, the Board voted to dismiss the matter involving Respondent’s family member. *Ibid.*

The ALJ concluded Respondent violated *N.J.S.A. 18A:12-24(b)* and *N.J.S.A. 18A:12-24.1(e)* as there is a “clear appearance of impropriety” in this matter because Respondent was present in multiple executive sessions when a matter involving an immediate family member was discussed and her presence during those meetings creates a “justifiable impression among the public that trust is being violated.” *Id.* at 4-5. The ALJ recommended the penalty of reprimand for the violations, as Respondent indicated she was told by the Superintendent that Board counsel said she could be present in executive session if she did not vote, and then when she was asked to leave the November 4, 2019, meeting, she did. *Id.* at 6.

IV. Exceptions

Petitioner’s Exceptions

In its exceptions, Petitioner agrees with the ALJ’s conclusion that Respondent violated *N.J.S.A. 18A:12-24(b)* and *N.J.S.A. 18A:12-24.1(e)*, but takes exception to the recommended penalty of reprimand and asserts that a censure is the more appropriate penalty in this matter.

Petitioner argues, Board members are not “insulated from blame” simply because they relied on advice from counsel, as the Commission has previously refused to accept such a defense in cases without evidence that the board member ever actually requested legal advice. Here, Petitioner contends there is “nothing in the record” to support that Respondent was told by Board counsel that she could be present in the meeting while a matter involving a member of her family was discussed, nor that Board counsel was aware that the subject involved was a member of Respondent’s family. Petitioner avers as an “experienced Board member and former practicing attorney,” Respondent should have “directly confirm[ed]” the information with Board counsel. As such, Petitioner maintains the Commission should reject the reliance on advice of counsel as a mitigating factor when determining the appropriate penalty for Respondent’s violations.

Petitioner further argues that before a copy of the Board’s decision on the matter involving Respondent’s family member was memorialized, Respondent’s spouse contacted the Superintendent indicating he disagreed with the findings, and then sent the Superintendent “new information.” Petitioner asserts based on these events, neither Respondent’s purported reliance on the advice of counsel or that she recused herself at the last Board meeting after Board counsel asked her to leave, are “sufficient to negate or mitigate the offensiveness of her proven conduct between those meetings, which, standing alone, warrant a penalty of censure.” The new information that Respondent’s spouse provided to the Superintendent “directly responded to the findings that were discussed in executive session,” which were not available to the other individuals who were involved, and which also indicated that Respondent shared confidential information. Additionally, as to the October 7, 2019, meeting, Respondent knew the District personnel, who were presenting the new information, were aware that the matter involved Respondent’s relative, and therefore, “it would have been reasonable for [the District personnel] to feel threatened by the silent presence of [Respondent],” because their “continued employment ... depended on the Board’s approval.”

Petitioner contends “there is overwhelming circumstantial evidence that [Respondent] communicated privileged Board information to a third party for that third party’s benefit in a matter before the Board” and Respondent failed to recuse herself from the Board meeting in which District administrators discussed a matter involving her family member, and therefore, the mitigating factors that the ALJ relies on are insufficient to defeat that Respondent should be censured for her conduct.

Respondent’s Exceptions

In her Exceptions, Respondent argues the ALJ incorrectly concluded that Respondent “voted” on a matter involving a family member. Respondent maintains she never voted on any matter related to a family member, and the ALJ’s decision is “unsound, contrary to the evidence and cannot be taken as true, and this matter should be sent back to the [OAL] for development of the factual record at a hearing.”³

Respondent contends that the ALJ made numerous contradictory statements in the Initial Decision. Despite the ALJ’s finding that “the circumstances could reasonably be interpreted to show that [Respondent] had the likely capacity to tempt the official to depart from his sworn public duty,” the ALJ concluded that none of the Board members were aware that Respondent’s family member was involved. Respondent deems it noteworthy that the Board did not rule in favor of Respondent’s family member, and therefore, there was “no way that [Respondent] could have tempted the Board members into voting in a manner that was favorable to her when none of them” were aware of the relationship.

Respondent further points out that the ALJ made contradictory findings when she concluded that Respondent did not violate *N.J.S.A. 18A:12-24(b)* and *N.J.S.A. 18A:12-24.1(e)*, but went on to conclude that Respondent violated *N.J.S.A. 18A:12-24(b)* in Counts 1-4 and *N.J.S.A. 18A:12-24.1(e)* in Counts 3 and 4.⁴ Per Respondent, “the fact that the ALJ’s initial decision is riddled with inconsistent statements, especially as it relates to the ALJ’s decision, is concerning to say the least.”

Furthermore, Respondent argues the ALJ “misapplied the law” as she did not engage in any private action beyond the scope of her duties. On the contrary, Respondent reaffirms that as soon as she became aware that the matter involving her relative was going to be discussed she “immediately informed” the Superintendent, who then told Respondent that Board counsel said she could be present but could not vote or participate. Respondent claims she would never have attended the meeting if it were not for the Superintendent’s insistence, and therefore, the ALJ erred in finding that Respondent took private action.

³ The Commission notes, while page 1 of the Initial Decision indicates that Petitioner asserts that Respondent violated the Act by “voting” on a matter involving a family member, the remainder of the decision only references Respondent’s presence in executive session. The Commission finds the inclusion of the word “voting” was in error.

⁴ The Commission notes the word “not” appears to be a typographical error. When the decision is read as a whole, the ALJ clearly intended to write that Respondent violated *N.J.S.A. 18A:12-24(b)* and *N.J.S.A. 18A:12-24.1(e)*.

Respondent claims the ALJ failed to give the appropriate weight to the “advice of counsel defense” as the Initial Decision lacked analysis or a conclusion as to why the defense was inapplicable.” Additionally, Respondent contends that summary decision is inappropriate as discovery is incomplete. According to Respondent, Petitioner “is delinquent in its discovery responses and therefore, is not entitled to summary decision.” Finally, Respondent asserts that the Commission must uphold the ALJ’s Consent Order sealing the records in this matter in any future proceedings and the matter must remain sealed.

V. Analysis

Upon a careful, thorough, and independent review of the record, the Commission agrees with the ALJ that Respondent violated *N.J.S.A.* 18A:12-24(b) in Counts 1-4 and *N.J.S.A.* 18A:12-24.1(e) in Counts 3-4. However, the Commission modifies the recommended penalty of reprimand in favor of censure.

N.J.S.A. 18A:12-24(b) prohibits a board member from using or attempting to use his official position to secure unwarranted privileges, advantages or employment for himself, members of his immediate family or others. By remaining in executive session while the Board discussed a confidential matter involving an immediate family member, Respondent used her official position as Board President to secure the unwarranted advantage of hearing the Board’s private discussion regarding her family member during executive session. Respondent learned information about the matter to which members of the public and other individuals involved in the matter were not privy. The second Board meeting (September 4, 2019) exemplifies this advantage. At that meeting, in executive session, the Board discussed the merits of the matter involving Respondent’s family member and during those discussions the Board attorney stated there was insufficient evidence to support Respondent’s family’s action. Despite the Board discussing Respondent’s family member’s matter in executive session, Respondent remained in executive session and heard the Board’s confidential discussion. That night in public session, the Board then voted to dismiss the action brought by Respondent’s family. However, the Board did not provide its written decision during public session. Later that evening, Respondent’s spouse, who was not in the executive session and who had not yet received the Board’s written decision, sent an email to the Superintendent disagreeing with the Board’s findings – findings which were not yet disclosed to him. The following day, Respondent’s spouse presented “new information” that then resulted in the matter being reopened at the next Board meeting. Respondent’s presence in executive session, while the Board discussed her family’s action and her spouse’s subsequent communication to the Superintendent, prior to the Superintendent revealing the reasons for the Board’s action, demonstrates that Respondent’s presence in the executive session secured an unwarranted advantage for her family. Moreover, as noted above, the Board attorney stated in executive session that there was insufficient evidence to pursue Respondent’s family’s action and the next day, Respondent’s spouse provided “new information” to support the matter. Based on the above, the Commission concludes that Respondent’s failure to leave the executive session while the Board discussed her family’s matter presented her with an advantage not otherwise available to the public or other individuals who were involved in the action.

Additionally, District personnel presented information regarding the confidential matter involving Respondent's immediate family member during the executive session of the Board's October 7, 2019, meeting. Again, Respondent was the Board President at the time, and Respondent's presence within the executive session had the potential to influence the District personnel's presentation regarding Respondent's family's action, which provided Respondent with an unwarranted privilege not available to members of the public or the other individuals who were involved in the action. As such, the Commission finds Respondent violated *N.J.S.A. 18A:12-24(b)* in Counts 1-4 when she remained in executive session on three occasions and on a fourth occasion, until she was asked to leave, while the Board discussed a personal matter involving her family.

Furthermore, under *N.J.S.A. 18A:12-24.1(e)*, a board member must recognize that authority rests with the board and a board member shall not make any personal promises or take any action that may compromise the board. As a Board member and President, Respondent was required to remove herself from confidential discussions involving her family member. Her failure to do so constitutes action beyond the scope of her duty as a Board member. Respondent attended the executive session at the October 7, 2019, Board meeting while District personnel reopened a matter involving her family member based on new information that her spouse provided. At the time, District personnel were aware of the relationship between Respondent and the subject matter of their presentation, so Respondent's presence at that meeting had the potential to intimidate or sway the presenters. As such, Respondent's presence at executive session during discussions involving a matter in which she had a conflict, by its nature, had the potential to compromise the Board and the integrity of the matter. Similarly, when Respondent attended the executive session at the November 4, 2019, Board meeting (until she was asked to leave), this again had the potential to compromise the Board given her direct personal conflict. As such, the Commission finds Respondent violated *N.J.S.A. 18A:12-24.1(e)* in Counts 3-4.

The Commission disagrees with Respondent's argument that she did not violate the Act because she relied upon the advice of the Board attorney. Board members are not "insulated from blame" when they rely on the advice of counsel, and instead are "responsible for their own actions," with a duty to act "prudently and cautiously." *Cheng v. Rodas, West New York Board of Education*, Commissioner's Decision No. 22-17ASEC (January 20, 2017), at 6. At the outset, it is relevant to note that Respondent did not ask for the advice of counsel; instead, Respondent relied upon the advice of the Superintendent, who said that she had spoken to the Board attorney. Moreover, the record demonstrates that Respondent formerly practiced as an attorney. Also, Respondent was Board President and has undergone Board member ethics training. Thus, Respondent should have known that it was a conflict to remain in executive session while a matter in which she had a personal interest was discussed. However, at the very least, she should have taken efforts to confirm the advice with Board counsel. Respondent is responsible for her own actions and there is no question that she should have acted cautiously and removed herself from executive session when she learned that a matter in which she had a personal interest would be discussed.

Moreover, Respondent's argument that the ALJ's grant of summary decision should be rejected because of outstanding discovery is not persuasive. First, Respondent fails to articulate what discovery is outstanding and necessary in this case. Likewise, Respondent fails to explain

how that discovery would present issues of fact requiring a hearing in this matter. Lastly, a claim of incomplete discovery will not defeat a motion for summary decision if the additional discovery will not patently alter the outcome of the case. *Cf. Wellington v. Est. of Wellington*, 359 N.J. Super. 484, 496 (App. Div.), *certif. denied*, 177 N.J. 493 (2003) (in discussing a motion for summary judgment, the court found discovery was not needed as it would not affect the outcome). Here, the Commission is satisfied the undisputed facts support violations of the Act and the Code and, as a result, additional discovery would not affect the outcome of this case.

While the ALJ recommended a penalty of reprimand for Respondent's violations of N.J.S.A. 18A:12-24(b) and N.J.S.A. 18A:12-24.1(e), the Commission **modifies** the recommended penalty of reprimand to **censure**. Respondent should have known that she was not permitted to listen to confidential discussions about a matter in which she had a direct conflict. It should be obvious to any Board member who has ever undergone ethics training that a matter involving an immediate family member is a conflict and Board members cannot be present for confidential discussions in those matters for which they have a conflict. Respondent remained in executive session discussions not once, but on three occasions and on a fourth occasion until she was directly asked to leave. Additionally, given that the same night that Respondent witnessed executive session discussions, her spouse contacted the Superintendent regarding findings that had not been made public and then sought to provide new information, the evidence of impropriety is glaring. As such, the Commission finds that a penalty of censure is warranted in this matter.

The Commission disagrees with the ALJ that Respondent's purported reliance on counsel is a mitigating circumstance to justify the decreased penalty of reprimand. As explained, Respondent did not request legal guidance from the attorney. As a former attorney herself, there is no excuse for not confirming with counsel. Additionally, the fact that the other Board members were not aware that the matter involved Respondent's family member does not excuse Respondent's behavior, nor is it a mitigating circumstance. Regardless of what other Board members knew, Respondent heard the Board discuss confidential information regarding her family member that she was not entitled to hear. Moreover, the District personnel who presented information on the matter were aware of Respondent's connection to the matter, especially since Respondent spoke to them prior to the meeting, and as such there is no question that Respondent's presence was improper.

The Commission has previously issued a penalty of censure for a violation of both N.J.S.A. 18A:12-24(b) and N.J.S.A. 18A:12-24.1(e). In *IMO Sanford Student, Evesham Township Board of Education, Burlington County*, OAL Dkt. No. EEC 2590-10, Agency Dkt. No. C40-09, Initial Decision (January 12, 2012), *adopted* School Ethics Commission (February 28, 2012), prior to the board formally voting to approve Beneficial Bank to provide banking services, the respondent contacted TD Bank and invited it to submit additional information that was outside the scope of the original request for proposal. The Commission found that the respondent's actions violated N.J.S.A. 18A:12-24(b) and N.J.S.A. 18A:12-24.1(e) and warranted a penalty of censure, which was adopted by the Commissioner of Education. *Sanford Student*, Commissioner's Decision No. 138-12SEC (April 16, 2012). Similar to how the respondent in *Sanford Student* sought to secure an advantage for TD Bank, which then presented additional information in the hope of changing the board's decision, here, following Respondent's presence

during private executive session discussions, Respondent's spouse contacted the Superintendent with new information, which resulted in reopening a matter which had already been decided by the Board. As the respondent in *Sanford Student* was censured for his violations of *N.J.S.A. 18A:12-24(b)* and *N.J.S.A. 18A:12-24.1(e)*, a penalty of censure is also justified in this matter.

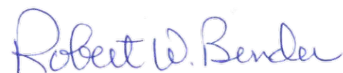
VI. Decision

For all of the aforementioned reasons, the Commission adopts the Initial Decision's findings of fact and legal conclusions that Respondent violated *N.J.S.A. 18A:12-24(b)* in Counts 1-4 and *N.J.S.A. 18A:12-24.1(e)* in Counts 3-4. However, the Commission modifies the recommended penalty of reprimand in favor of **censure** for the violations.

Pursuant to *N.J.S.A. 18A:12-29(c)*, this decision shall be forwarded to the Commissioner of Education for review of the Commission's recommended penalty. The parties may either: 1) file exceptions to the recommended sanction; 2) file an appeal of the Commission's finding of a violation; or 3) file both exceptions to the recommended sanction together with an appeal of the finding of a violation.

Parties taking exception to the recommended sanction of the Commission but *not disputing* the Commission's finding of a violation may file, **within thirteen (13) days** from the date the Commission's decision is forwarded to the Commissioner, written exceptions regarding the recommended penalty 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," as well as to (ControversiesDisputesFilings@doe.nj.gov). A copy must also be sent to the Commission (school.ethics@doe.nj.gov) and all other parties.

Parties seeking to appeal the Commission's finding of violation *must* file an appeal pursuant to the standards set forth at *N.J.A.C. 6A:4:1 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 date of mailing to the parties, as shown below. In such cases, the Commissioner's review of the Commission's recommended sanction will be deferred and incorporated into the Commissioner's review of the finding of violation 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 briefs on appeal.



Robert W. Bender, Chairperson

Mailing Date: August 22, 2023

**Resolution Adopting Decision
in Connection with C09-20**

Whereas, at its meeting on November 24, 2020, the School Ethics Commission (Commission) voted to transmit the above-captioned matter to the Office of Administrative Law (OAL) for a hearing; and

Whereas, the Administrative Law Judge (ALJ) issued an Initial Decision dated April 19, 2023; and

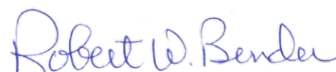
Whereas, the ALJ found that Respondent violated *N.J.S.A.* 18A:12-24(b) in Counts 1-4 and *N.J.S.A.* 18A:12-24.1(e) in Counts 3-4, and recommended that Respondent be reprimanded; and

Whereas, Petitioner and Respondent filed exceptions to the Initial Decision; and

Whereas, at its meeting on July 25, 2023, the Commission reviewed the record in this matter, discussed adopting the ALJ's conclusion that Respondent violated *N.J.S.A.* 18A:12-24(b) and *N.J.S.A.* 18A:12-24.1(e), and discussed modifying the recommended penalty of reprimand in favor of censure; and

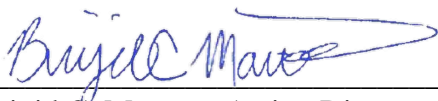
Whereas, at its meeting on August 22, 2023, the Commission reviewed and voted to approve the within decision as accurately memorializing its actions/findings from its meeting on July 25, 2023; and

Now Therefore Be It Resolved, the Commission hereby adopts the within decision.



Robert W. Bender, Chairperson

I hereby certify that this Resolution was duly adopted by the School Ethics Commission at its regularly scheduled meeting on August 22, 2023.



Brigid C. Martens, Acting Director
School Ethics Commission