

93-26
SEC Dkt No. C03-21
OAL Dkt. No. EEC 07955-21
Agency Dkt. No. 8-6/24A

New Jersey Commissioner of Education

Final Decision

In the Matter of Adi Nikitinsky, Monroe
Township Board of Education, Middlesex
County

This matter involves an appeal of the School Ethics Commission’s (Commission) June 17, 2024 determination that appellant Adi Nikitinsky—a member of the Monroe Township Board of Education (Board)—violated 18A:12-24(a) and 18A:12-24(c) of the School Ethics Act (Act). The Commission recommended a penalty of reprimand for the violation. Having carefully reviewed the Commission’s decision and the record in its entirety, the Commissioner finds that the Commission’s decision 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)*. The Commissioner also finds that a penalty of reprimand is appropriate.

The relevant facts are as follows. Appellant served as the President of the Monroe Township Middle School Parent Staff Association (PSA); he also owns and operates Dot Designing. In January 2020, appellant became a member of the Board. Prior to becoming a Board member and continuing thereafter, appellant, through Dot Designing, donated spirit wear to the PSA for fundraisers. To facilitate sales for the fundraiser at issue, appellant sent emails to district staff at the middle school, including the middle school principal, asking them to send emails advertising for the online fundraiser. When a customer purchased spirit wear from the PSA’s online store, the customer was instructed to pick up the purchase at Dot Designing.

On February 11, 2021, complainant Sarah Aziz filed a complaint with the Commission, alleging that appellant violated the Act and the Code of Ethics for School Board Members. With respect to Count One, complainant alleged that appellant violated *N.J.S.A. 18A:12-24.1(f)* when he directed the district's principal to promote sales of the PSA spirit wear while simultaneously operating a business that provided said spirit wear to the PSA for resale. Complainant further alleged under Count Two that appellant violated *N.J.S.A. 18A:12-24(a)*, (b), and (c) by requesting the district's principal and staff to send emails advertising the PSA sales while appellant also voted on the principal's contract, which allegedly created a conflict of interest due to appellant's business interest with the PSA. Counts 3 and 4, which alleged violations of *N.J.S.A. 18A:12-24.1(e)*, were dismissed by the Commission on May 25, 2021. On July 27, 2021, the Commission found probable cause for the remaining allegations in the complaint and, based on its finding of probable cause, transmitted the matter to the Office of Administrative Law (OAL) for a hearing.

On March 12, 2024, the Administrative Law Judge (ALJ) issued an Initial Decision, finding that appellant did not violate *N.J.S.A. 18A:12-24(a)*, *N.J.S.A. 18A:12-24(b)*, *N.J.S.A. 18A:12-24(c)*, or *N.J.S.A. 18A:12-24(f)*, and dismissing the matter.

Thereafter, on June 17, 2024, the Commission adopted the ALJ's factual findings, credibility determinations, and most of the legal conclusions; however, the Commission rejected the ALJ's conclusion that appellant did not violate *N.J.S.A. 18A:12-24(a)* and *18A:12-24(c)*. The Commission found that appellant violated *N.J.S.A. 18A:12-24(a)* due to appellant's conflict of interest arising from the use of his private company to fundraise for the PSA while he also served as a Board member. Pursuant to *N.J.S.A. 18A:12-24(a)*, "[n]o school official or member of his immediate family shall have an interest in a business organization or engage in any business, transaction, or professional activity which is in substantial conflict with the proper discharge of

his duties in the public interest.” The Commission noted that Advisory Opinions A03-21¹ and A04-21² made it clear that “Board members are not permitted to conduct business in the District where they hold office, and even Board members involved in non-profit entities are prohibited from providing services to District families or collaborating with the [parent-teacher organization], or providing information regarding the non-profit to the Board, employees of the District, or District families.” SEC Decision at 6. The Commission reasoned that, consistent with A03-21 and A04-21, although appellant’s ownership in his company, Dot Designing, did not alone create a conflict of interest, selling his company’s merchandise on behalf of the PSA directly to students and parents was in substantial conflict with proper discharge of appellant’s duties as a Board Member despite the merchandise being donated.

The Commission further concluded that appellant violated *N.J.S.A. 18A:12-24(c)*. *N.J.S.A. 18A:12-24(c)* prohibits a school official from acting “in his official capacity in a matter where he, a member of his immediate family, or a business organization in which he has an interest, has a direct or indirect financial involvement that might reasonably be expected to impair his objectivity or independence of judgment,” and from acting “in his official capacity in a matter where he or a member of his immediate family has a personal involvement that is or creates some benefit to him or a member of his immediate family.” The Commission noted that a violation of *N.J.S.A. 18A:12-24(c)* hinges on whether a “direct or indirect financial involvement might reasonably be expected to impair a school official’s objectivity or independence of

¹ In Advisory Opinion A03-21, the Commission advised that a Board member would violate the Act if they or the non-profit they established “directly solicited financial contributions, donations, or supplies from the District families; provided services to District families; and/or collaborated with District PTO while [he/she is] a Board member.”

² In Advisory Opinion A04-21, the Commission concluded that a board member should recuse themselves from any matter involving a non-profit in which they formerly served as leader that comes before the board and that said board member should not attempt to provide any information regarding the non-profit to the board, employees of the district, and/or district families.

judgment, and as such, is measured from the perspective of the public.” SEC Decision at 7. The determinative factor in whether a violation of *N.J.S.A. 18A:12-24(c)* has occurred is the “public’s perception and not the school official’s belief as to whether he could participate in a matter objectively.” *Ibid.* (quoting *In re Famularo, Asbury Park Bd. of Educ., Monmouth County*, Docket No. C23-96 (Feb. 24, 1998)). Stated differently, if the public would reasonably expect that a vote would be tainted by a school official’s involvement, then the school official should abstain from the discussion and vote. The Commission concluded that appellant’s requests that the principal send emails to students and families to promote the sale of spirit wear provided an indirect financial benefit to appellant in the form of free advertising that could generate recognition and goodwill for appellant’s company. Since a reasonable member of the public could perceive this to impair appellant’s objectivity and independence of judgement and create a conflict of interest, the Commission found that appellant violated *N.J.S.A. 18A:12-24(c)*.

With respect to the finding that appellant did not violate *N.J.S.A. 18A:12-24(b)*, which prohibits board members from using or attempting to use their official position to secure an unwarranted privilege, advantage, or employment for themselves, members of their immediate family, or others, the Commission concurred with the ALJ, noting that appellant had already been involved with the PSA prior to becoming a Board member and the record was absent of any facts indicating that appellant sought any changes to his relationship or dynamic with the PSA after becoming a Board member. Thus, the Commission concluded that the facts in this matter do not support the conclusion that appellant used his position as a member of the Board to secure a privilege or advantage in violation of *N.J.S.A. 18A:12-24(b)*.

Pursuant to *N.J.S.A. 18A:12-24.1(f)*, school officials are prohibited from surrendering their independent judgment to special interest or partisan political groups or from using the schools

for personal gain or for the gain of friends. The Commission found that appellant did not utilize his position as a Board member to obtain a benefit from the donation of spirit wear from his company as a fundraiser for the PSA. Notably, appellant donated spirit wear through the PSA both prior to and after becoming a Board member, and the record does not demonstrate that appellant's alleged use of the schools for personal gain stemmed from his Board membership. As such, the Commission found that a violation of N.J.S.A. 18A:12-24.1(f) had not been established.

In his appeal to the Commissioner, appellant contends that (1) the Commission's purported reliance on Advisory Opinions A03-21 and A04-21 is unfair because they were issued after the events at issue occurred; (2) the Commission's factual findings are not supported by the record; and (3) Advisory Opinions A03-21 and A04-21 are unenforceable because they constitute de-facto rulemaking in violation of the Administrative Procedure Act (APA).

In opposition, the Commission argues that its findings and conclusions regarding appellant's violation of N.J.S.A. 18A:12-24(a) and 18A:12-24(c) are reasonable and sufficiently supported by the record. The Commission contends that appellant incorrectly asks the Commissioner to review the evidence anew, which is not the correct standard of review for an appeal. The Commission also asserts that Advisory Opinions A03-21 and A04-21 do not constitute de-facto rulemaking in violation of the APA, as alleged by appellant, because they do not satisfy the factors set forth in *Metromedia, Inc. v. Director, Div. of Taxation*, 97 N.J. 313, 331-32 (1984).

In adjudicating appeals from decisions of the Commission, the Commissioner must "ascertain whether the decision is supported by sufficient credible evidence in the record and shall not disturb the decision unless the appellant has demonstrated that [the Commission] acted in a manner that was arbitrary, capricious, or contrary to law." N.J.A.C. 6A:4-4.1(a).

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(a)* is supported by sufficient credible evidence, and that appellant has not established that the Commission's decision is arbitrary, capricious, or contrary to law. *N.J.A.C. 6A:4-4.1(a)*. There is no dispute that appellant's business provided merchandise to the PSA to be sold to district families; this conduct clearly constitutes a transaction, and it is therefore prohibited by *N.J.A.C. 6A:4-4.1(a)* if it is in substantial conflict with the proper discharge of his duties as a Board member. Appellant argues that the Commission's findings are not supported by the record because he donated all of the merchandise and did not profit or even get reimbursed for costs. However, the Commission's decision specifically acknowledged that the merchandise was donated, and its finding does not depend on appellant having earned revenue. Although appellant donated the merchandise, the fundraiser nonetheless indirectly promoted his business when orders were picked up at its location. While appellant argues that this pickup location was reasonable because the school building was closed due to the Covid-19 pandemic, the fact remains that families nonetheless were required to be present at appellant's business to pick up their spirit wear. It was therefore clear to those families that the spirit wear was created by appellant's business. The Commissioner does not find anything arbitrary, capricious, or unreasonable in the Commission's conclusion that families might feel pressure, even if unintended, to purchase merchandise from the fundraiser due to appellant's position on the Board, or that his conduct was therefore substantially in conflict with his duties as a Board member.

Appellant's assertion that the Commission's finding is unfair and erroneous because Advisory Opinions A03-21 and A04-21 were issued after appellant's conduct occurred is misplaced. Advisory Opinions A03-21 and A04-21 provide clarification—to the extent it is even

needed—that nonprofit work can conflict with a board member’s duties. There is no authority that prevents the Commission from finding a school official acted improperly merely because Advisory Opinions that address similar conduct were issued post hoc. Furthermore, while the Commission’s decision discusses these Advisory Opinions, the Commission’s conclusion is ultimately based on the specific language of *N.J.S.A. 18A:12-24(a)*: the Commission expressly determined that appellant’s actions were in substantial conflict with the proper discharge of his duties because his company transacted with district families and solicited those sales.

Appellant’s argument that Advisory Opinions A03-21 and A04-21 violate the APA because they constitute de facto rulemaking is also unpersuasive. The following factors determine whether an agency action constitutes formal rulemaking that must comply with the APA:

(1) [the action] is intended to have wide coverage encompassing a large segment of the regulated or general public, rather than an individual or a narrow select group; (2) is intended to be applied generally and uniformly to all similarly situated persons; (3) is designed to operate only in future cases, that is, prospectively; (4) prescribes a legal standard or directive that is not otherwise expressly provided by or clearly and obviously inferable from the enabling statutory authorization; (5) reflects an administrative policy that (i) was not previously expressed in any official and explicit agency determination, adjudication or rule, or (ii) constitutes a material and significant change from a clear, past agency position on the identical subject matter; and (6) reflects a decision on administrative regulatory policy in the nature of the interpretation of law or general policy.

Metromedia, 97 N.J. at 331-32 (1984). Appellant does little to explain how Advisory Opinions A03-21 and A04-21 constitute de facto rulemaking based on these factors beyond reciting the factors and stating that they apply to Advisory Opinions A03-21 and A04-21. For example, appellant argues that the Advisory Opinions set a significantly more restrictive prohibition on board members’ activities than had existed previously, without citing any case in which this

allegedly less-restrictive standard was applied. It is appellant's burden to show how and to what extent the *Metromedia* factors apply, and the Commissioner finds that appellant has failed to meet that burden.

The Commissioner also concurs with the Commission that appellant's conduct violated *N.J.S.A. 18A:12-24(c)*. It is well-established that "a public official is disqualified from participating in judicial or quasi-judicial proceedings in which the official has a conflicting interest that may interfere with the impartial performance of his duties as a member of the public body." *Wyzykowski v. Rizas*, 132 *N.J.* 509, 523 (1993). This standard applies to the Act and, importantly, finding a conflict under the Act does not require an interest to give rise to a pecuniary benefit. *Friends Retirement Concepts v. Bd. of Educ. Borough of Somerville*, 356 *N.J. Super.* 203, 213 (Law. Div. 2002). The language of *N.J.S.A. 18A:12-22(a)*, respecting a concern for any "justifiable impression among the public," confirms that this is not intended to be a flexible or lenient standard. See *N.J.S.A. 18A:12-22(a)* ("[B]oard members . . . must avoid conduct which is in violation of their public trust or which creates a justifiable impression among the public that such trust is being violated."). The legislative intent of *N.J.S.A. 18A:12-24(c)* is that "board members shall not participate in a matter where they have an interest that may interfere with their impartial performance." *In re Roman*, 2023 *N.J. Super.* Unpub. LEXIS 2379, at *10 (App. Div. Dec. 21, 2023). In determining whether an impermissible conflict exists, neither an actual conflict of interest nor "whether the public servant succumbs to the temptation," is the decisive factor; instead, it is whether there is a potential for conflict. *Friends, supra*, 356 *N.J. Super.* at 214 (citing *Griggs v. Borough of Princeton*, 33 *N.J.* 207, 219 (1960)) (internal quotations omitted).

It is undisputed that appellant voted on the principal's employment as a Board member. It is also undisputed that appellant requested the principal to send emails to students and

families regarding the sale of spirit wear for the fundraiser. Despite the fact that appellant donated the spirit wear, such communication with the principal, students, and families nonetheless provides an indirect benefit to appellant by providing free advertising and generating name recognition for his company. Moreover, given that appellant voted on the principal's employment and was a current member of the Board, it would be reasonable for a member of the public to think that the principal would feel obliged to acquiesce to appellant's request. Clearly the dynamic created by appellant's utilizing his private company for the fundraiser and making requests to the principal that provide an indirect benefit to his company creates a justifiable impression among the public for the potential for conflict and thus violates *N.J.S.A. 18A:12-24(c)*.

Finally, the Commissioner concurs with the Commission that the least severe penalty, a reprimand, is appropriate. Although appellant's use of his company, Dot Designing, to donate spirit wear for the PSA fundraiser generated good will and name recognition amongst the community, in addition to providing free advertising, appellant did not receive a direct pecuniary benefit. As such, the Commissioner concurs that a penalty of reprimand is appropriate in this matter.

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

IT IS SO ORDERED.³


COMMISSIONER OF EDUCATION

Date of Decision: March 16, 2026
Date of Mailing: March 16, 2026

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.

Before the School Ethics Commission
OAL Docket No.: EEC-07955-21
SEC Docket No.: C03-21
Final Decision

I/M/O Adi Nikitinsky,
Monroe Township Board of Education, Middlesex County,
Respondent

I. Procedural History

The above-captioned matter arises from a Complaint that was filed with the School Ethics Commission (Commission) on February 11, 2021,¹ by Sarah Aziz (Complainant), alleging that Adi Nikitinsky (Respondent), a member of the Monroe Township Board of Education (Board), violated the School Ethics Act (Act), *N.J.S.A.* 18A:12-21 *et seq.* More specifically, the Complaint alleged that Respondent violated *N.J.S.A.* 18A:12-24(a), *N.J.S.A.* 18A:12-24(b), and *N.J.S.A.* 18A:12-24(c) in Count 2, as well as *N.J.S.A.* 18A:12-24.1(e) in Counts 3 and 4 and *N.J.S.A.* 18A:12-24.1(f) in Count 1 of the Code of Ethics for School Board Members (Code).

At its meeting on May 25, 2021, and after reviewing Respondent's Motion to Dismiss in Lieu of Answer (Motion to Dismiss), and Complainant's response thereto, the Commission adopted a decision granting the Motion to Dismiss as to the allegations in Counts 3 and 4, but denying the Motion to Dismiss as to the allegations in Counts 1 and 2. Based on its decision, the Commission also directed Respondent to file an Answer to Complaint (Answer) as to the remaining allegations in the Complaint (Counts 1 and 2). On June 1, 2021, Respondent filed an Answer as directed.

Thereafter, at its meeting on July 27, 2021, the Commission voted to find probable cause for all of the remaining allegations in the Complaint. Based on its finding of probable cause, the Commission also voted to transmit the within matter to the Office of Administrative Law (OAL) for a hearing.

Following a hearing at the OAL, the Administrative Law Judge (ALJ) issued an Initial Decision on March 12, 2024, concluding Respondent did not violate *N.J.S.A.* 18A:12-24(a), *N.J.S.A.* 18A:12-24(b), *N.J.S.A.* 18A:12-24(c) or *N.J.S.A.* 18A:12-24.1(f), and dismissing the matter. Thereafter, Petitioner filed exceptions to the Initial Decision, in accordance with *N.J.A.C.* 1:1-18.4, and Respondent filed a reply thereto.

At its meeting on May 21, 2024, the Commission considered the full record in this matter. Thereafter, at its special meeting on June 17, 2024, the Commission voted to adopt the

¹ On February 10, 2021, Complainant filed a deficient Complaint; however, on February 11, 2021, 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.

ALJ's findings of fact, as well as the legal conclusions that Respondent did not violate *N.J.S.A.* 18A:12-24(b) or *N.J.S.A.* 18A:12-24.1(f), modify the ALJ's legal conclusions to find that Respondent violated *N.J.S.A.* 18A:12-24(a) and *N.J.S.A.* 18A:12-24(c), and recommend that a penalty of reprimand be imposed.

II. Initial Decision

Respondent serves as the President of the Monroe Township Middle School Parent Staff Association (PSA) and has been an active member for several years. *Initial Decision* at 5. Additionally, Respondent owns and operates Dot Designing, which makes spirit wear for the middle school PSA. *Ibid.* Respondent sold spirit wear to the middle school students as a fundraiser for the PSA for several years prior to becoming a Board member in January 2020, and continues to do so after joining the Board. *Id.* at 6. To promote the fundraising sales, Respondent sends advertisements to the middle school principal, using his Dot Designing email address, and the school then "send[s] the information home with the students or email[s] it to the parents on a regular basis." *Ibid.* According to Respondent, purchases for spirit wear were made through the website operated by his spouse's company, and all payments were electronically submitted to PayPal. *Id.* at 4. Additionally, Respondent indicated that when school was closed during the COVID pandemic, parents were notified that their orders could be picked up at the building where his and his spouse's businesses are located. *Ibid.*

The ALJ found that "[n]either Respondent, nor his company . . . received any personal or financial benefits from the sale of spirit wear," Respondent "did not ask for, nor did he receive, any favorable treatment in the sale of spirit wear for the middle school PSA," and Respondent "did not use his position as Vice President of the Board to benefit his company." *Ibid.* Additionally, the ALJ found "Respondent's correspondence to and from the [middle school principal] was from his personal/business email, and there was no evidence that he ever used his position on the [B]oard to obtain any special treatment." *Ibid.*

Complainant and Respondent, as well as several other witnesses, testified at a hearing in this matter, and the ALJ found "the witnesses to be credible, except for [Complainant], who demonstrated significant bias against [Respondent]." *Id.* at 5. Additionally, the ALJ noted Complainant did not present "testimony or documentation to support or corroborate the allegations that" Respondent used his position on the Board to further any personal or financial agenda, nor did Complainant have any evidence to demonstrate Respondent received any financial gain. *Ibid.*

The Complaint alleged, in Count 1, that Respondent violated *N.J.S.A.* 18A:12-24.1(f) by using his position as a Board member and school resources to benefit his company. According to Complainant, as President of the PSA, Respondent was involved in fundraising with the PSA, including by selling/donating spirit wear that is produced by Dot Designing. Additionally, Complainant maintains Respondent corresponds with the principal by email to send out communications to parents about upcoming fundraisers. In Count 2, the Complaint alleged that Respondent violated *N.J.S.A.* 18A:12-24(a), *N.J.S.A.* 18A:12-24(b) and *N.J.S.A.* 18A:12-24(c) when he asked the principal to send emails to District parents advertising the spirit wear sales while he also votes on the principal's contract, which is a "clear conflict of interest" because

Respondent has a business arrangement with the middle school “as both officer and chief vendor of the [middle school] PSA.” Respondent admits to voting on the employment of the principal as a Board member. *Respondent’s Response to Petitioner’s First Request for Admissions, Exhibit P-10*.

The ALJ concluded Petitioner failed to demonstrate any violations of the Act. *Initial Decision* at 8. According to the ALJ, the credible witness testimony demonstrates that there was a “long history of allowing solicitation for the sale of spirit wear by the associations and that all correspondence regarding such sales went through the principal.” *Id.* at 7. The ALJ asserts there was not any evidence to demonstrate that Respondent received any financial benefit from the sales that he solicited through the school from the sale of spirit wear. *Id.* at 7-8. The ALJ further asserts there is not any evidence to support that Respondent used his role as a Board member to receive any favorable treatment from the school for the sale of spirit wear. *Id.* at 8. According to the ALJ, the middle school had a “long-standing practice of sending home emails and information about the sale of spirit wear,” and in fact Respondent had utilized this longstanding practice for the benefit of the PSA for years prior to becoming Board Vice President. *Ibid.* Finally, the ALJ notes that there was not any evidence to demonstrate that Respondent’s role as president of the PSA impaired his judgment as a Board member or was in substantial conflict with his role as a Board member. *Ibid.* Therefore, the ALJ dismissed the Complaint with prejudice. *Ibid.*

III. Exceptions

Petitioner’s Exceptions

Petitioner argues the ALJ “failed to consider relevant evidence in the record” and “failed to apply the Commission’s previous decisions holding that the mere appearance of impropriety and the potential for conflict are sufficient to violate the Act or Code.”

First, Petitioner argues that the ALJ’s determination that it “failed to satisfy its burden of proof by a preponderance of the credible evidence” was incorrect because the ALJ “ignored important evidence.” More specifically, Petitioner notes the ALJ “failed to make relevant findings with respect to the alleged violation of *N.J.S.A.* 18A:12-24(c).” According to Petitioner, the ALJ did not address Respondent’s interactions with the principal and “[t]here is clear evidence” to show that Respondent was conflicted because he acted in his official capacity to vote on the principal’s contract while requesting that she advertise the PSA’s sale of his company’s goods. As to a violation of *N.J.S.A.* 18A:12-24(b), *N.J.S.A.* 18A:12-24(c) and *N.J.S.A.* 18A:12-24.1(f), Petitioner contends that the ALJ “erroneously found” Respondent did not receive a personal or financial benefit from the PSA’s sale of his company’s donated spirit wear. Petitioner notes Respondent’s company received “goodwill on account of these purchases.” According to Petitioner, customers were directed to pick up their merchandise from the business’s premises, which visibly displayed the company’s name, and clearly the business received “name-recognition and goodwill through his donations.” Further, a reasonable person could “mistakenly conclude” that Respondent’s business profited from the sale of his goods to the PSA. Finally, Petitioner maintains the ALJ incorrectly found that Respondent had been using the same practices to request email notifications that had been used “for the past several years”

because the district staff “made an effort to regularize these emails” during Respondent’s tenure as the PSA President. In sum, Petitioner asserts, contrary to the ALJ’s findings, the record clearly shows that Respondent did not follow the procedures that were in place in previous years, and therefore, any member of the public could conclude that “given the increased number of email notifications, [Respondent’s] [B]oard position was compromised because he was using his position to direct [D]istrict staff to increase the advertisement of the PSA’s sales of his own company’s goods.”

Next, Petitioner argues the ALJ’s legal conclusions should be rejected because the ALJ did not consider the entire record and did not apply the Commission’s “governing interpretation of the [Act] and the [Code].” Petitioner further argues that the ALJ incorrectly found that Respondent “did not receive any financial benefit from the sales that he solicited.” However, Petitioner notes a violation of the Act does not “hinge on whether a Board member actually receives a financial or other gain.” Petitioner notes that although Respondent is not prohibited from serving as a Board member and as a member of the PSA, “the involvement of his personal business in PSA fundraising activities, that business’s notoriety in the township, and his exercise of influence over district staff and the principal to promote a PSA fundraiser tied up with his personal business created a clear appearance of impropriety.” Petitioner maintains Respondent “engaged with district staff, including the principal, from an email bearing the name of his private company, and asked parents to pick up the spirit [] wear from his company’s place of business” while simultaneously publicly voting on the principal’s salary. Petitioner further maintains any “reasonable member of the public could perceive that he used his position as a Board member to promote a PSA fundraiser designed to advertise his company’s goods.” Petitioner contends Respondent’s actions violate the Act and warrant a penalty.

Finally, Petitioner asserts Respondent should receive a censure because he “engaged in conduct which could reasonably be seen as an attempt to garner goodwill for his business and which a reasonable member of the public would perceive as compromising his integrity as a Board member.” According to Petitioner, although Respondent is no longer a Board member, “[i]t should be made clear that ethical risks arise when a board member has an ownership interest in a private enterprise dealing with organizations with strong ties to the very district it serves.”

Respondent’s Reply to Petitioner’s Exceptions

Respondent asserts the ALJ’s findings were based on “her assessment of the credibility of the witnesses’ testimony,” and therefore, “the agency head ‘may no longer sift through the record anew to make its own decision[.]’” Respondent further asserts, contrary to Petitioner’s argument, the ALJ considered all the relevant evidence and Petitioner is “just disappointed at the result.” According to Respondent, even if the Commission finds that charges were not addressed, “the evidential record could not possibly support a finding of guilt on any of the charges.”

As to a violation of *N.J.S.A.* 18A:12-24(a), Respondent contends Petitioner needs to prove that Respondent was involved in some organization that conflicted with his duties as a Board member. Respondent further contends “there is nothing unethical about a school board member serving as the leader of a parent organization.” Respondent maintains he does not have a

contract with the District, but rather with the PSA, a private organization that is neither run nor controlled by the District.

Regarding a violation of *N.J.S.A.* 18A:12-24(b) and *N.J.S.A.* 18A:12-24(c), Respondent argues the only “reference to actions in his official capacity as a Board member was [Petitioner’s] unpersuasive attempt to prove he could subtly pressure” the principal and her secretary by voting on their employment. Further, Petitioner did not provide any evidence to show that Respondent attempted to secure “unwarranted” privileges or advantages. Respondent maintains he did not secure a financial benefit for himself or his business, he did not receive preferential treatment, there is no evidence that shows that his donations to the PSA were unethical because they elevated his business standing in the community, nor any support for Petitioner’s theory and it would be dangerous if the implications are accepted.

As to a violation of *N.J.S.A.* 18A:12-24.1(f), Petitioner did not provide any evidence to demonstrate that Respondent surrendered his independent judgment to any special interest group or partisan political group or used the schools for personal gain for himself or friends. Respondent maintains that while the “fundamental premise” of the case is that he “used his position as a Board member to pressure the Middle School staff to leverage his access as PSA President to generate revenue for his private business,” there is not any evidence to support this claim, and to the contrary, Respondent’s bank records demonstrate that he donated all goods, and did not even receive reimbursement for cost.

According to Respondent, Petitioner argues that the ALJ erred by focusing on what Respondent “actually did (or, better put, what he was alleged to have done but didn’t) instead of how his conduct may have appeared to a reasonable observer.” However, Respondent argues he did not do anything in his capacity as PSA President that would have appeared unethical to a reasonable observer. Respondent maintains every email and conversation that he had with District personnel “was entirely appropriate to his role as such, and no different or more frequent than those sent by the President of the other parent organization, the PTO.” Respondent further maintains a reasonable observer would not have “suspected that [R]espondent was in a position to pressure the Principal or her secretary by threatening to affect their job security or compensation,” because they both had tenure and their compensation was fixed by union contracts.

Finally, Respondent asserts Petitioner did not provide any evidence to show that the Complaint was anything other than a “disgruntled, unsuccessful candidate for the Board impulsively lashing out against someone she blamed for her defeat.” Therefore, Respondent asserts that Commission should accept the ALJ’s findings and the Complaint should be dismissed.

IV. Analysis

Upon a careful, thorough, and independent review of the record, the Commission adopts the ALJ’s findings of fact, modifies the ALJ’s legal conclusions to find that Respondent violated *N.J.S.A.* 18A:12-24(a) and *N.J.S.A.* 18A:12-24(c), and recommends that a penalty of reprimand be imposed.

At the outset, the Commission notes that, while a Board member's simultaneous service both on the Board and on the Parent Teacher Association (PTA), including in a leadership role, is not a *per se* conflict of interest, situations or circumstances may arise based on the dual positions that result in violations of the Act. See *Advisory Opinion A07-00* (A07-00) and *Advisory Opinion A15-18* (A15-18). Accordingly, Respondent has not engaged in a violation of the Act simply due to his membership on both the Board and as President of the PSA.

The Commission finds that Respondent's conflict of interest stems from the use of his private company as a means to fundraise for the PSA, while he is a Board member. The fact that Respondent donates the spirit wear and does not make a profit does not alleviate him of this conflict. In *Advisory Opinion A03-21* (A03-21), a Board member established a non-profit entity "aimed at helping 'families in crisis' with their basic needs" during the pandemic, such as through grocery gift cards, meals, supplies, or paying a household bill. The Commission advised that the Board member would violate the Act if he/she or the non-profit "directly solicited financial contributions, donations, or supplies from District families; provided services to District families; and/or collaborated with District PTO" while he/she is a Board member. Similarly, in *Advisory Opinion A04-21* (A04-21), prior to being elected to the Board, a Board member became a chapter leader for a non-profit organization that focused on the health benefits of delaying school start times for middle and high school students. The Board member received "no personal benefit (monetary or otherwise)" related to her membership in the non-profit. The Commission advised that not only should the Board member recuse from any matter involving the non-profit that comes before the board of education, but he/she should "not attempt to provide any information regarding the [n]on-[p]rofit to the Board, employees of the District, and/or District families." The Commission has previously advised that board members involved in non-profit organizations are prohibited from donating goods or services within the District where they serve as a Board member or collaborating with the PTO. Similarly, in this matter, Respondent's personal company would be prohibited from donating materials to use in a fundraising sale with the PSA once he became a Board member.

Pursuant to *N.J.S.A.* 18A:12-24(a), "[n]o school official or member of his immediate family shall have an interest² in a business organization or engage in any business,³ transaction, or professional activity which is in substantial conflict with the proper discharge of his duties in the public interest." In A03-21 and A04-21, the Commission made clear that Board members are not permitted to conduct business in the District where they hold office, and even Board members involved in non-profit entities are prohibited from providing services to District families or collaborating with the PTO, or providing information regarding the non-profit to the Board, employees of the District, or District families. Notably, the Commission did not advise that Board members could not be involved in those organizations, but rather a conflict would

² "Interest" is defined as "the ownership or control of more than 10% of the profits, assets, or stock of a business but shall not include the control of assets in a labor union." *N.J.S.A.* 18A:12-23.

³ "Business" is defined as "any corporation, partnership, firm, enterprise, franchise, association, trust, sole proprietorship, union, political organization, or other legal entity but shall not include a local school district or any other public entity." *N.J.S.A.* 18A:12-23.

arise when those organizations become involved/associated with the District, while they are Board members. It is clear from the record that Respondent is the owner and operator of Dot Designing, and as such, he has an interest in the business organization. It is also clear from the record that Respondent's company makes spirit wear, which is donated and sold to middle school students and parents as a fundraiser for the PSA. Consistent with its advice in A03-21 and A04-21, the Commission finds that while Respondent's ownership interest in his company does not, *on its own*, create a conflict for Respondent, the *transaction* of selling his company's merchandise on behalf of the PSA directly to students and parents, through his website and picked up at his company's location, is in substantial conflict with the proper discharge of Respondent's duties as a Board member, even if the merchandise is donated. This conflict is further compounded by Respondent's use of the middle school principal, whose employment he oversees as a Board member, to send targeted emails soliciting sales from students and their families. Further, this arrangement, in which students and parents receive an email asking them to purchase spirit wear from Respondent's company, creates a conflict as it may cause parents to feel pressured to make a purchase solely due to Respondent's status as a Board member, which would pit Respondent's sale of spirit wear in conflict with his position on the Board. Accordingly, the involvement of Respondent's company in the District to fundraise for the PTA while he is a Board member creates a substantial conflict for Respondent, in violation of *N.J.S.A. 18A:12-24(a)*.

N.J.S.A. 18A:12-24(c) prohibits a school official from acting in his official capacity in a matter where he, a member of his immediate family, or a business organization in which he has an interest, has a direct or indirect financial involvement that might reasonably be expected to impair his objectivity or independence of judgment, and from acting in his official capacity in a matter where he or a member of his immediate family has a personal involvement that is or creates some benefit to him or a member of his immediate family.

A violation of *N.J.S.A. 18A:12-24(c)* hinges on whether a direct or indirect financial involvement *might reasonably be expected* to impair a school official's objectivity or independence of judgment, and as such, is measured from the perspective of the public. Essentially, "[t]he question will always be whether the circumstances could reasonably be interpreted to show that they had the likely capacity to tempt the official to depart from his sworn public duty." *Friends Retirement Concepts v. Board of Education of the Borough of Somerville*, 356 N.J. Super. 203, 214 (Law Div. 2002). The Commission has found, "In determining whether there is a violation of *N.J.S.A. 18A:12-24(c)*, the determinative factor is the public's perception and not the school official's belief as to whether he could participate in a matter objectively." *In re Famularo, Asbury Park Board of Education, Monmouth County*, Docket No. C23-96 (February 24, 1998). The violation is "based on an actual relationship that a reasonable person would expect to create a conflict of interest." *Ibid*. Further, "if the public would reasonably expect that the motion and vote were tainted by" a school official's involvement, then the school official should abstain from the discussion and vote. *Ibid*.

Respondent admits to voting on the principal's employment as a Board member, and the Commission finds the vote occurred in Respondent's official capacity as a Board member. The Commission further finds that Respondent and the company that he owns and operates have an indirect financial involvement in the principal's employment in the District because Respondent

contacts the principal on a regular basis to request that the principal send emails to students and families to promote the sale of spirit wear. Such regular communication with the principal provides an indirect financial benefit to Respondent as it is free advertising that garners name recognition and goodwill for his company. Respondent's frequent contact with the principal, while serving as a Board member, to personally promote the sale of spirit wear from Respondent's company, through Respondent's website, and to direct the merchandise be picked up at the building where Respondent's company is located, creates the appearance of impropriety. A reasonable member of the public would perceive that the conflict created by Respondent's contact with the principal to benefit his business, at least indirectly, would impair his objectivity and independence of judgment, in violation of *N.J.S.A. 18A:12-24(c)*.

N.J.S.A. 18A:12-24(b) prohibits board members from using or attempting to use their official position to secure an unwarranted privilege, advantage, or employment for themselves, members of their immediate family, or others. Given the specific facts and circumstances in this matter, the Commission finds the evidence does not demonstrate that Respondent violated *N.J.S.A. 18A:12-24(b)*. Prior to becoming a Board member, Respondent was involved in the PSA, and in that capacity, organized fundraisers through Dot Designing that utilized the principal to notify students and parents of the sales. Upon becoming a Board member, Respondent continued to use his personal/business email to communicate regarding PSA fundraisers. Given that the practice had already been established, and it does not appear from the record that Respondent sought any changes to the process upon being elected to the Board, the facts of this matter do not demonstrate that Respondent *used his official position* on the Board (as opposed to his position as a member of the PSA) to secure a privilege or advantage, and a violation of *N.J.S.A. 18A:12-24(b)* has not been established.

Pursuant to *N.J.S.A. 18A:12-24.1(f)*, school officials are prohibited from surrendering their independent judgment to special interest or partisan political groups or from using the schools for personal gain or for the gain of friends. Based on the facts deduced at the hearing in this matter, the Commission finds that Respondent did not leverage his position as a Board member to acquire a benefit from the sale of spirit wear from his personal company as a fundraiser for the PSA. Respondent sold spirit wear through the PSA prior to his being elected as a Board member, and the record does not demonstrate that Respondent's alleged use of the schools for personal gain stemmed from his Board membership. As such, a violation of *N.J.S.A. 18A:12-24.1(f)* has not been established.

With respect to a penalty, the Commission notes that Respondent's use of his private company as a means to fundraise for the PSA, while he is a Board member, creates a clear and substantial conflict of interest. However, the Commission finds that because the fundraising opportunity involving the use of Respondent's company was in practice prior to when Respondent became a Board member, and because Respondent donated the materials and did not directly receive a monetary profit from each sale, a penalty of reprimand is appropriate in this matter.

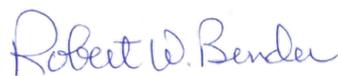
V. Decision

For the aforementioned reasons, the Commission adopts the ALJ's findings of fact, as well as the legal conclusions that Respondent did not violate *N.J.S.A.* 18A:12-24(b) or *N.J.S.A.* 18A:12-24.1(f), modifies the ALJ's legal conclusions to find that Respondent violated *N.J.S.A.* 18A:12-24(a) and *N.J.S.A.* 18A:12-24(c), and recommends that a penalty of reprimand be imposed.

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: June 17, 2024

**Resolution Adopting Decision
in Connection with C03-21**

Whereas, at its meeting on July 27, 2021, 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 March 12, 2024; and

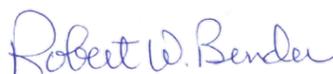
Whereas, the ALJ found that Respondent did not violate *N.J.S.A.* 18A:12-24(a), *N.J.S.A.* 18A:12-24(b), *N.J.S.A.* 18A:12-24(c) or *N.J.S.A.* 18A:12-24.1(f), and dismissed the matter; and

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

Whereas, at its meeting on May 21, 2024, the Commission reviewed the record in this matter, discussed adopting the ALJ's findings of fact, as well as the legal conclusions that Respondent did not violate *N.J.S.A.* 18A:12-24(b) or *N.J.S.A.* 18A:12-24.1(f), modifying the ALJ's legal conclusions to find that Respondent violated *N.J.S.A.* 18A:12-24(a) and *N.J.S.A.* 18A:12-24(c), and recommending a penalty of reprimand be imposed; and

Whereas, at its special meeting on June 17, 2024, the Commission reviewed and voted to approve the within decision as accurately memorializing its actions/findings from its meeting on May 21 2024; 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 special meeting on June 17, 2024.



Brigid C. Martens, Director
School Ethics Commission



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. EEC 07955-21

AGENCY DKT. NO. C03-21

**IN THE MATTER OF ADI NIKITINSKY,
MONROE TOWNSHIP BOARD OF
EDUCATION, MIDDLESEX COUNTY.**

Kevin F. Milton, Deputy Attorney General, on behalf of petitioner School Ethics Commission (Matthew J. Platkin, Attorney General, State of New Jersey, attorney)

David B. Rubin, Esq., for respondent Adi Nikitinsky (David B. Rubin, P.C., attorneys)

Record Closed: February 2, 2024

Decided: March 12, 2024

BEFORE **SARAH G. CROWLEY**, ALJ:

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

Sarah Aziz filed a complaint against the respondent, Adi Nikitinsky, on February 11, 2021, with the petitioner, the School Ethics Commission (Commission), alleging violations of the School Ethics Act, N.J.S.A. 18A:12-21 to -34 as well as the Code of Ethics for School Board Members, N.J.S.A. 18A:12-24(a), (b), and (c) and N.J.S.A. 18A:12-24.1(e) and (f). On June 1, 2021, respondent filed an answer to the complaint.

On September 21, 2021, the matter was transmitted to the Office of Administrative Law as a contested matter. N.J.S.A. 52:14B-1 to -15; N.J.S.A. 52:14F-1 to -23. The matter was heard via Zoom on October 11, 2023, October 13, 2023, and October 16, 2023, and the record closed after the submission of post-hearing briefs on February 2, 2024.

FACTUAL DISCUSSION

The Commission has alleged that the respondent used his position as a school board member to benefit his company, Dot Designing. The respondent was the president of the Parent-Staff Association (PSA), and in that capacity was involved in fundraising for the PSA. The PSA raises money by selling spirit wear that is produced by Dot Designing. The respondent corresponds via email with the principal of the school to send out communications to the parents about upcoming fundraisers. The respondent donates all the material and labor in the production and sale of spirit wear. There is no evidence that there is any financial benefit to the respondent's company by the sale of spirit wear. The Commission found probable cause to support the allegation that respondent used his position as a board member to promote his business and/or for an improper advantage in violation of School Ethics Act and the Code of Ethics for School Board Members.

Testimony

Sarah Aziz, who is the complainant in this matter, testified as a fact witness. She was a member of the school board but had lost her re-election bid in 2021 to individuals who were aligned with the respondent. She testified that her daughter was in middle school and that she would receive emails from the school regarding the purchase of spirit wear from Dot Designing. She was aware that the respondent was the owner of Dot Designing. She was familiar with the respondent, as they had gone to the same high school, and he was a school board member. She explained that there were two associations: the Parent-Teacher Association (PTA) and the Parent-Staff Association. In her opinion, when the respondent became the vice president of the school board in January 2021, it was inappropriate for him to continue his role with the PSA and the sale of spirit wear.

Ms. Aziz was unaware of any profits that respondent made or whether the materials were all donated. She was aware that he had been in this role for some time and had been producing middle-school spirit wear for many years. His children have all gone through the middle school. However, when he became vice president of the board of education, she thought it created an appearance of impropriety. She had no information about profits or if he received any benefits that other school-related organizations did not. Moreover, there was no testimony or documentary evidence that he used his board position to benefit the sale of spirit wear for the PSA or to benefit Dot Designing.

Catherine Crowley was the treasurer of the PSA for the middle school during the relevant time period. She identified the records that she provided in response to a subpoena. She discussed the process of payment for the merchandise that was purchased for the PSA. Ms. Crowley explained that it was all done through PayPal, and purchases were made online. The kids could pick up the purchases **from Dot Designing or at school**. She recalled that **during COVID, they would pick the purchases up from the office of Dot Designing**. She discussed the bookkeeping software that was used. She was not sure about the profits or cost of items, but she thought that Dot Designing donated the materials, and all the profits for the purchase of spirit wear went to the PSA. The PSA was founded in 2018. She knew who Mr. Nikitinsky was, but she had very little interaction with him, as all sales were made online. There were no payments made to him.

Barbara Lonczak worked for the Monroe Township Board of Education. She retired in July 2023. She was the principal's secretary for twenty-one years. She began her employment at the high school and then transferred to the middle school. She worked for Shari Chumley, the principal, from 2010 to 2021. She was familiar with Mr. Nikitinsky, as he was the president of the PSA in 2020. She did not have any contact with him prior to that. When he became president, consistent with prior practice he would send notices to her to be sent out to the students regarding PSA sales. She recalled that there was a problem at some point with parents complaining about the frequency of emails, so they limited the emails to every other week. Ms. Lonczak said that they would send them the notices to all the organizations, and Mr. Nikitinsky and the PSA did not receive any special treatment. There was no difference between the different organizations. Ms. Lonczak

described “Connect 5,” which resulted in paperless communications regarding the PTA and PSA and fundraisers.

Adi Nikitinsky owns and operates a business called Dot Designing. He has three children who have gone through middle school in Monroe Township. He has always made donations to the PSA and has donated things such as T-shirts, banners, and other “swag.” His company did not make any profit from the sale of spirit wear, and he donated all of the product. He was asked to step in and become the president of the PSA in September 2020 because they needed someone, so he agreed to do it. He was not active in any other groups and had little experience in running such an organization prior to becoming the president. All his emails were sent from his Dot Designing email address, which is his personal email as well.

Mr. Nikitinsky answered several questions regarding his wife and her involvement in a company called Orange Media Group. He explained that this was the company that controlled the internet site where the spirit wear was ordered for the PSA. He donated everything from Dot Designing and never made any profit from the sale of spirit wear. The purchases were made through the website, and all payments were made through PayPal. He was never involved in the accounting aspect of the PSA. At some point during COVID, the kids would have to pick up the merchandise at their building, which is where Dot Designing as well as Orange Media Group is located. His email address for Dot Designing was the same email he used for personal and business matters.

He was elected to the school board in November 2019 and sworn into office in January 2020 for a three-year term. This was his only time on the board of education in Monroe Township. His only contact with the principal was as the president of the PSA and not as a board member. He never used his position as a school board member or as the vice president of the school board to benefit the PSA or Dot Designing. He never made any profit from the sale of spirit wear and donated the product that was used for spirit wear.

Findings of Fact

Credibility is the value that a fact finder assigns to the testimony of a witness, and it incorporates the overall assessment of the witness's story considering its rationality, consistency, and how it comports with other evidence. Carbo v. United States, 314 F.2d 718 (9th Cir. 1963); See In re Polk, 90 N.J. 550 (1982). Credibility findings "are often influenced by matters such as observations of the character and demeanor of witnesses and common human experience that are not transmitted by the record." State v. Locurto, 157 N.J. 463 (1999). A fact finder is expected to base decisions on credibility on his or her common sense, intuition, or experience. Barnes v. United States, 412 U.S. 837 (1973).

Overall, I found the witnesses to be credible, except for Ms. Aziz, who demonstrated significant bias against Mr. Nikitinsky. Moreover, she presented no testimony or documentation to support or corroborate the allegations that the respondent used his position on the Monroe Township Board of Education to further any personal or financial agenda, nor did they have any evidence to demonstrate any financial gain by his company, Dot Designing.

Accordingly, I **FIND** the following as **FACT**:

1. Respondent was elected to the Monroe Township Board of Education in November 2019 and sworn in on January 1, 2020.
2. Respondent was elected vice president of the Monroe Township Board of Education in January 2021.
3. Respondent was the president of the Monroe Township Middle School Parent Staff Association and has been an active member of this organization for several years.
4. Respondent owns and operates Dot Designing, a printing company that makes, among other things, spirit wear for the Monroe Middle School PSA.

5. Respondent had been selling spirit wear to the students at Monroe Middle School for several years prior to becoming a school board member.
6. The advertisements for such sales are sent by the respondent to the principal of the middle school. Thereafter, the school would send the information home with the students or email it to the parents on a regular basis. This practice is identical to the practice used in the Middle School for years.
7. All the correspondence and emails to the school principal are sent from the Dot Designing email address. This is both the respondent's personal and business email address.
8. Neither respondent, nor his company, Dot Designing, received any personal or financial benefits from the sale of spirit wear.
9. The respondent did not ask for, nor did he receive, any favorable treatment in the sale of spirit wear for the middle school PSA, for which he served as the president commencing in 2020.
10. The respondent did not use his position as Vice President of the Board of Education or his role as a member of the Board of Education to benefit his company Dot Designing.
11. Respondent's correspondence to and from the principal of the school was from his personal/business email, and there is no evidence that he ever used his position on the board to obtain any special treatment.

LEGAL ANALYSIS AND CONCLUSION

The petitioner has alleged violations of the School Ethics Act and the Code of Ethics by the respondent, specifically,

N.J.S.A. 18A:12-24, provides as follows:

- (a) No school official or member of his immediate family shall have an interest in a business organization or engage in any business, transaction, or professional activity, which is in substantial conflict with the proper discharge of his duties in the public interest;
- (b) No school official shall use or attempt to use his official position to secure unwarranted privileges, advantages or employment for himself, members of his immediate family or others;
- (c) No school official shall act in his official capacity in any matter where he, a member of his immediate family, or a business organization in which he has an interest, has a direct or indirect financial involvement that might reasonably be expected to impair his objectivity or independence of judgment. No school official shall act in his official capacity in any matter where he or a member of his immediate family has a personal involvement that is or creates some benefit to the school official or member of his immediate family.

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

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.

And N.J.S.A. 18A:12-24.1(f) provides:

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.

The petitioner alleges that respondent used his position as a board member for an advantage or benefit, whether financial or otherwise, for his company Dot Designing. The credible testimony from the witnesses demonstrates that there was a long history of allowing solicitation for the sale of spirit wear by the associations and that all correspondence regarding such sales went through the principal. There was no evidence that the respondent **received any financial benefit** from the sales that he solicited through

the school from the sale of spirit wear. In addition, there is no evidence that the respondent used his role as a member of the school board or as school board vice president to receive any favorable treatment from the school for the sale of spirit wear. The school had a long-standing practice of sending home emails and information about the sale of spirit wear, and in fact, the respondent had utilized this longstanding practice for the benefit of the association for years prior to his becoming vice president of the school board. Finally, there was no evidence presented that the respondent's role as president of the PSA impaired his judgment as a school board member or was in substantial conflict with his role as a member of the school board.

I **CONCLUDE** that the petitioner has failed to demonstrate any violations of the applicable statutes by a preponderance of credible evidence.

ORDER

I, therefore, **ORDER** that the petition is **DISMISSED** with prejudice.

I hereby **FILE** this initial decision with the **COMMISSIONER OF THE DEPARTMENT OF EDUCATION** for consideration.

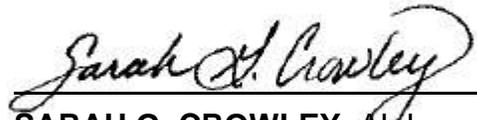
This recommended decision may be adopted, modified, or rejected by the **COMMISSIONER OF THE DEPARTMENT OF EDUCATION**, who by law is authorized to make a final decision in this matter. If the Commissioner of the Department of Education does not adopt, modify, or reject this decision within forty-five days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

Within thirteen days from the date on which this recommended decision was mailed to the parties, any party may file written exceptions with the **COMMISSIONER OF THE DEPARTMENT OF EDUCATION, ATTN: BUREAU OF CONTROVERSIES AND DISPUTES, 100 Riverview Plaza, 4th Floor, PO Box 500, Trenton, New Jersey 08625-**

0500, marked "Attention: Exceptions." A copy of any exceptions must be sent to the judge and to the other parties.

March 12, 2024

DATE



SARAH G. CROWLEY, ALJ

Date Received at Agency: March 12, 2024

Date Mailed to Parties: _____

SGC/lam/kl

APPENDIX

WITNESSES

For petitioner

Sarah Aziz

For respondent

Adi Nikitinsky

Catherine Crowley

Barbara Lonczak

EXHIBITS

For petitioner

- P-1 PSA Bank Statements
- P-2 Email receipt of purchase transaction, dated April 12, 2021
- P-3 Email thread from Maria Facciponti to Louise Baumann, Liz Preuster, copying Chari Chanley and William Jacoutot, dated September 11, 2019
- P-4 Email thread from Chari Chanley to Dot Designing, copying Barbara Lonczak
- P-5 Email thread from Dot Designing to Barbara Lonczak
- P-6 Email thread from Barbara Lonczak to Dot Designing, copying Chari Chanley
- P-7 Legacy Tile Email
- P-8 Certification of Catherine Crowley
- P-9 Not admitted
- P-10 Respondent's response to petitioner's First Request for Admissions, dated March 18, 2022
- P-11 Respondent's response to petitioner's Second Request for Admissions
- P-12 Email thread from Chari Chanley to Kathryn Crowley, dated February 24, 2021
- P-13 Letter from Liz Pruester, dated April 20, 2021
- P-14 Email thread from Respondent to Dori Alvich and Kevin Higgins, copying Steven Riback

For respondent

- R-1 Certification of Adi Nitikinsky, dated March 23, 2021
- R-2 Respondent's answers to petitioner's First Set of Interrogatories
- R-3 Not admitted
- R-4 Monroe Township Facebook Page post
- R-5 Not admitted
- R-6 Excerpt from Monroe Township Education Facebook Group Page
- R-7 Excerpts from the August 23, 2022 Minutes of School Ethics Committee meeting
- R-8 Not admitted
- R-9 Not admitted
- R-10 Not admitted
- R-11 Not admitted
- R-12 emails