Before the School Ethics Commission
Final Decision

Barbara Holstein, *Complainant* v. Tacia Raftopoulos-Johnson, Montague Board of Education, Sussex County, *Respondent*	OAL Docket No.: EEC-15030-15 SEC Docket No.: C14-15 *Consolidated*
I/M/O Tacia Raftopoulos-Johnson, Montague Board of Education, Sussex County	OAL Docket No.: EEC-15136-16 SEC Docket No.: C08-16

I. Procedural History

This consolidated matter arises from two (2) separate but related Complaints, both of which allege Tacia Raftopoulos-Johnson (Respondent), a former member and former President of the Montague Board of Education (Board), violated the School Ethics Act (Act), *N.J.S.A.* 18A:12-21 *et seq*. More specifically, and in the matter captioned by the School Ethics Commission (Commission) as **C14-15**, Barbara Holstein (Complainant) alleged that Respondent violated *N.J.S.A.* 18A:12-24.1(a), *N.J.S.A.* 18A:12-24.1(b), *N.J.S.A.* 18A:12-24.1(e), *N.J.S.A.* 18A:12-24.1(f), and *N.J.S.A.* 18A:12-24.1(j) of the Code of Ethics for School Board Members (Code) in Count 1, and violated *N.J.S.A.* 18A:12-24.1(a), *N.J.S.A.* 18A:12-24.1(b), *N.J.S.A.* 18A:12-24.1(c), *N.J.S.A.* 18A:12-24.1(d), *N.J.S.A.* 18A:12-24.1(e), and *N.J.S.A.* 18A:12-24.1(f) of the Code in Count 2.

At its meeting on August 25, 2015, and after considering Respondent's Motion to Dismiss in Lieu of Answer (Motion to Dismiss), the Commission voted to grant the Motion to Dismiss as to the alleged violations of *N.J.S.A.* 18A:12-24.1(a), *N.J.S.A.* 18A:12-24.1(b), and *N.J.S.A.* 18A:12-24.1(j) in Count 1, grant the Motion to Dismiss as to the alleged violation of *N.J.S.A.* 18A:12-24.1(a) in Count 2, and to deny the Motion to Dismiss as to all other allegations in the Complaint. The Commission also voted to transmit C14-15 to the Office of Administrative Law (OAL) for a plenary hearing. After being transmitted to the OAL, the matter was held in abeyance by the Honorable John Scollo, Administrative Law Judge (ALJ Scollo) because of a subsequent Complaint (C08-16) filed by Complainant detailing additional violations of the Act by Respondent. *Initial Decision* at 3.

In that regard, and in the matter captioned by the Commission as **C08-16**, Complainant alleged that Respondent violated *N.J.S.A.* 18A:12-24(a), *N.J.S.A.* 18A:12-24(b), *N.J.S.A.* 18A:12-24(c), *N.J.S.A.* 18A:12-24(f), *N.J.S.A.* 18A:12-24.1(a), *N.J.S.A.* 18A:12-24.1(c), and *N.J.S.A.* 18A:12-24.1(f). At its meeting on September 27, 2016, and after previously dismissing the alleged violation of *N.J.S.A.* 18A:12-24(a) as a result of Respondent's Motion to Dismiss, the

Commission voted to find probable cause for the alleged violations of *N.J.S.A.* 18A:12-24(b), *N.J.S.A.* 18A:12-24(c), *N.J.S.A.* 18A:12-24(f), *N.J.S.A.* 18A:12-24.1(a), *N.J.S.A.* 18A:12-24.1(c), and *N.J.S.A.* 18A:12-24.1(f). Based on the Commission's findings of probable cause, C08-16 was also transmitted to the OAL for a plenary hearing and, pursuant to *N.J.A.C.* 6A:28-10.7(b), the attorney for the Commission (Petitioner) was charged with prosecuting the allegations in the Complaint which the Commission found probable cause to credit.

At the OAL, C08-16 was assigned to the Honorable Gail M. Cookson, Administrative Law Judge (ALJ Cookson). *Id*. at 3. During a case management conference, discovery and other prehearing issues were discussed, as was the transfer and consolidation of C14-15 with C08-16. *Id*. Following consolidation of the above-captioned matters, and after several postponements, plenary hearings were conducted on March 7, 2019, June 6, 2019, and June 17, 2019. *Id*. After the parties submitted final post-hearing summations, the record closed on July 12, 2019. *Id*.

On August 2, 2019, ALJ Cookson issued an Initial Decision, and the Commission acknowledged receipt of same contemporaneous thereto; as such, the forty-five (45) day statutory period for the Commission to issue a Final Decision was September 16, 2019. Prior to September 16, 2019, the Commission requested a forty-five (45) day extension of time to issue its final decision. Pursuant to *N.J.S.A.* 52:14B-10(c) and *N.J.A.C.* 1:1-18.8, and for good cause shown, the Commission was granted an extension until October 31, 2019.

Although Petitioner filed its Exceptions on August 19, 2019, Respondent indicated, through counsel, that she was unable to reply to Petitioner's Exceptions and/or to file her own Exceptions to the Initial Decision until receipt of the transcript(s) from the plenary hearings. As a result, and pursuant to *N.J.S.A.* 52:14B-10(c) and *N.J.A.C.* 1:1-18.8, and for good cause shown, the Commission was granted, with the consent of the parties, an extension until March 15, 2020, to issue its Final Decision. Thereafter, Respondent filed her reply to Petitioner's Exceptions on December 17, 2019, and Petitioner filed its response to Respondent's reply on January 2, 2020. Complainant did not file Exceptions to the Initial Decision, or otherwise reply to Petitioner's or Respondent's Exceptions.

At its meeting on January 21, 2020, the Commission considered the full record in this matter. Thereafter, and at its meeting on February 25, 2020, the Commission voted to **modify** ALJ Cookson's "finding" that, when she attended the Port Jervis board meeting, Respondent "merely introduced herself, described the attorney RFP [Request for Proposal] process for replacing [the attorney] who had dual[ly] represented Montague and High Point, and suggested that the boards meeting personally instead of communicating through counsel…"; **reject** ALJ Cookson's "finding" that, "[o]n the basis of the preponderance of the credible evidence, [Respondent] never used her position to obtain a personal benefit for herself or her family", and to **accept** all other findings of fact; **adopt** the legal conclusion that Respondent did not violate *N.J.S.A.* 18A:12-24.1(e) or *N.J.S.A.* 18A:12-24.1(f) as alleged in Count 1 of C14-15; **adopt** the legal conclusion that Respondent did not violate *N.J.S.A.* 18A:12-24.1(b) or *N.J.S.A.* 18A:12-24.1(d) as alleged in Count 2 of C14-15; **reject** the legal conclusion that Respondent did not violate *N.J.S.A.* 18A:12-24.1(c), *N.J.S.A.* 18A:12-24.1(e), or *N.J.S.A.* 18A:12-24.1(f) as alleged in Count 2 of C14-15; **reject** the legal conclusion that Respondent did not violate *N.J.S.A.* 18A:12-24(b), *N.J.S.A.* 18A:12-24(c), *N.J.S.A.* 18A:12-24(f), *N.J.S.A.* 18A:12-24.1(a), *N.J.S.A.*

18A:12-24.1(c), or *N.J.S.A.* 18A:12-24.1(f) in C08-16; and, having found violations of the Act in C08-16, the Commission determines to **reject** ALJ Cookson's determination that the consolidated matter should be dismissed and the Commission's probable cause order should be reversed.

Based on its legal conclusions, the Commission also voted to recommend that the Commissioner of Education (Commissioner) impose a penalty of censure for Respondent's multiple violations of the Act.

II. Initial Decision

Based upon the testimonial evidence – namely the testimony of Rosalie Lamonte (Interim Executive County Superintendent for Sussex County), Complainant, Respondent, and Robert L. Bumpus (then Assistant Commissioner for the Division of Field Services) – as well as the documentary evidence, and "having had the opportunity to observe the demeanor of the witnesses and assess their credibility," ALJ Cookson issued the following operative findings of fact:

1) On June 24, 2013, then Commissioner Christopher D. Cerf (Commissioner Cerf) granted the June 18, 2013 application of the Board to revoke the Department of Education's (Department) consent to the out-of-state send-receive contract between the Board and the Port Jervis Public School District (Port Jervis). *Initial Decision* at 4.

2) On June 24, 2013, Commissioner Cerf also granted the Board leave to enter into a new send-receive agreement with the High Point Regional School District (High Point) for the education of its (the Board's) high school students, with same having been completed on or about August 13, 2013, and effective September 1, 2013. *Id*.

3) Respondent was elected to the Board in November 2014, and was sworn in at the January 2015 reorganization meeting. *Id*.

4) Respondent, who previously served as a Board member from 2004 through 2007, was elected Board President at the January 2015 reorganization meeting. *Id*.

5) By correspondence dated August 19, 2015, Robert L. Bumpus (Bumpus), then Assistant Commissioner for the Division of Field Services, advised the Board, including Respondent, that any Montague School District (District) "parent who decides to send their child to Port Jervis in September … will be responsible for tuition payments to Port Jervis." *Id*.

6) According to Rosalie Lamonte (Lamonte), the Interim Executive County Superintendent for Sussex County since June 2009, the "2013 decision of … Commissioner [Cerf] only covered the high school grades nine through twelve." *Id*. at 5.

7) Lamonte testified that it was not until 2014 that then Commissioner David C. Hespe (Commissioner Hespe) "revoked the send-receive agreement with Port Jervis for [the Board's] middle school students." *Id.*

8) Lamonte "was aware of the community feelings against revoking the Port Jervis relationship, which she characterized as mostly based on tradition." *Id*.

9) Lamonte "assisted the Department with the letter on Montague parents having to abide [by] the Commissioner's decision, privately pay for tuition in Port Jervis if they chose to send their children notwithstanding, and follow any proper appeal remedies." *Id*.

10) Lamonte recalled participating in two (2) meetings "in the spring of 2015" with Respondent, "the new Board attorney, and several others." *Id*. at 6. Although there were discussions to "spell out a dual-track option for some Montague students to choose to attend Port Jervis," Lamonte conveyed that such was "not likely to happen…because the Commissioner did not want to have New Jersey tax dollars going to New York." *Id*.

11) Based on Lamonte's "inquiry" about the allegation that Cherie Adams, Esquire, represented both the Board and High Point at the time the new send-receive agreement was negotiated (between the Board and High Point), Lamonte was informed that "the districts were not both clients at the same time." *Id*.

12) Although Lamonte expected the Board to file official appeal paperwork, it took "a wait-and-see attitude about flexible send-receive options. *Id.*

13) During her testimony, Complainant noted that she served on the Board from 2010 to 2013, and that the issue of the send-receive agreement with Port Jervis first came up in a Buildings and Grounds Committee Meeting in 2011. *Id*. at 7.

14) Following questioning of Complainant, it became clear that Respondent was not responsible for forwarding the letter that Complainant claimed Respondent withheld. *Id*.

15) Complainant also testified that, in her personal opinion, "the five-year transition plan ended up satisfying the five-year notice provision in the Port Jervis send-receive agreement." *Id*.

16) Complainant also acknowledged "that it was **not** [R]espondent who introduced the resolution [at the Board meeting] on August 25, 2015, that sought to continue to pay tuition to Port Jervis in contradiction to the Commissioner's direction." *Id*. at 8 (emphasis added).

17) Regarding the email message that Respondent sent to her child's guidance counselor, Complainant indicated that "she construed the subject communication as not just the prerogative of a parent on behalf of their child." *Id*.

18) During his testimony, Bumpus testified that he authored the "notice to Montague that the Commissioner had previously expanded the termination of the Port Jervis agreement to include seventh and eighth grade students, and as such, there would be no allowance of a 'dual choice' for which the district would be financially liable." *Id*. at 10.

19) According to Respondent, the "new or 2015 Board learned only after the start of their term of the negotiations and communications of the prior anti-Port Board." *Id*. at 11.

20) It was Respondent's understanding that "the prior Board had not undertaken a feasibility study to support the request of the Commissioner to terminate the Port Jervis contractual agreement," and that the contract between the Board and Port Jervis "required a five-year notice for termination …, which the anti-Port Board never sent." *Id*.

21) Regarding "her attendance at a Port Jervis meeting," Respondent indicated that, "the Board approved it and also received updates from her afterwards." *Id*.

22) At the Port Jervis meeting, Respondent "merely introduced herself, described the attorney [Request for Proposal] process for replacing [the attorney] who had dual[ly] represented [the Board] and High Point, and suggested that the boards meet personally instead of communicating through counsel in the short run." *Id*.

23) Regarding the email that she sent to her child's guidance counselor, Respondent testified she "properly" sent the email "as a parent and not as a Board member." *Id*. at 12. According to Respondent, her child, who was in eighth grade during the 2014-2015 school year, "was upset at being told that [he/she] had to pick High Point high school classes for the next year when he wanted to continue to attend Port Jervis." *Id*.

24) As for the special meeting, at which the Resolution was adopted, the "official action was undertaken by the full Board and not just [Respondent], during which there was extensive discussion held in executive session." *Id*.

25) Respondent testified that it was her understanding that the Board's request of the Commissioner to terminate the send-receive agreement with Port Jervis "was not a genuine application pursuant to the statute." *Id*.

26) According to Respondent, the "pro-Port Board" eventually appealed the termination "but only after the August special meetings because they had … to gather the information and hire a new attorney." *Id.*

27) Respondent also admitted that the Board voted to rescind the Transition Plan "as they were all hopeful that they could obtain some better arrangements for the Montague students." *Id.* at 12-13.

28) On the basis of the preponderance of the credible evidence, "[Respondent] never used her position to obtain a personal benefit for herself or her family." *Id*. at 13.

29) On the basis of the preponderance of the credible evidence, "[Respondent] never advocated a position that was not also expressly supported and voted upon by the majority if not all of the other Board members." *Id*. Instead, the "positions so advocated were unfortunately a form of end-run around or exercise in self-help from an unappealed Commissioner determination to rescind the historic Port Jervis send-receive agreement." *Id*.

Based on the findings of fact set forth above, ALJ Cookson concluded that Petitioner failed to prove, by a preponderance of the evidence, that Respondent violated the Act as alleged in this consolidated matter. *Id*. at 15. As to the allegations in Count 1 (of C14-15), "[R]espondent did not send or intend that email in any role other than as a parent on her son's behalf." *Id*. According to ALJ Cookson, "[i]t is of no legal moment that [Respondent] happened to have bcc'd some other parents." *Id*.

Regarding Count 2 (of C14-15), ALJ Cookson concluded that Respondent "did act specifically as Board President when she attended the Port Jervis meeting but had full authority of the other Board members to do so." *Id*. According to ALJ Cookson, Respondent "did [not] misrepresent the various positions being debated at that time," and it was "an informative status update to the Port Jervis Board." *Id*.

As for the remaining allegations in this consolidated matter, ALJ Cookson concluded that "respondent did not take personal action as a Board President to achieve an unwarranted personal benefit" and that "[t]he Board, as a whole took action that attempted to reverse the impact of the Port Jervis termination decision of the Commissioner." *Id*. at 16. ALJ Cookson also noted that, "Board members vote in a manner on agenda items that matter to them, that they ran on during their election, and that they feel passionate about." *Id*. ALJ Cookson also opined that this consolidated matter "should have been dismissed with the global settlement negotiated to resolve the send-receive relationships of the District." *Id*. at 17.

Based on the legal conclusions set forth above, ALJ Cookson ordered that the consolidated matter be dismissed, and that the Commission's "Probable Cause Order" be reversed.

III. Summary of the Parties' Exceptions

1. Petitioner's Exceptions to the Initial Decision

In Petitioner's Exceptions to the Initial Decision, which were filed on August 19, 2019, it is argued that Petitioner has proven, by a preponderance of evidence, that Respondent violated the Act and; therefore, Petitioner asserts that ALJ Cookson's decision should be rejected. In this regard, Petitioner contends that when Respondent called a special meeting of the Board on August 25, 2015, and "vot[ed] for a resolution authorizing the payment of tuition to Port Jervis in defiance of DOE directives, Respondent used her position as Board President to 'secure unwarranted … advantages … for [her]self [and] … [a] member[] of [her] immediate family' in violation of the Act" and in doing so, Respondent also "acted in her official capacity in a manner in which she and her family had a 'direct or indirect financial involvement' and a 'personal involvement that is or creates some benefit to the school official or member of his immediate family …'" Respondent's February 18, 2015, email to Mr. Caporale, as well as her August 7, 2015 letters, reveal that Respondent was "determined to send her [child]" to Port Jervis High School for the 2015-16 school year. In addition, when Respondent called the special meeting (August 25, 2015) and voted to authorize the payment of tuition to Port Jervis, despite correspondence from the DOE (April 20 and August 18, 2015), explicitly informing Montague

parents who wanted "to send their children to Port Jervis would be responsible for tuition payments," she used her position as Board President to secure an unwarranted advantage for herself and her child and, therefore, violated *N.J.S.A.* 18A:12-24(b). Moreover, Respondent "had a direct or indirect pecuniary interest – as well as a direct personal interest – in calling the special meeting and voting for the resolution," and, therefore, also violated *N.J.S.A.* 18A:12-24(c).

Petitioner further argues that neither Respondent nor the Board filed a legal challenge to the Commissioner's decision regarding the send-receive agreement nor did Respondent or the Board file a legal challenge to the DOE's April 20 and August 18, 2015, correspondence, prior to Respondent calling the special meeting (August 25), and voting to authorize tuition payment (which was in defiance of the DOE's directive, as well as the Commissioner's decision regarding the send-receive agreement). Therefore, Respondent violated *N.J.S.A.* 18A:12-24.1(a). Furthermore, although Petitioner agrees with the ALJ's assessment that Respondent's actions constituted "a form of end-run around or exercise in self help from an unappealed Commissioner determination to rescind the historic Port Jervis send-receive agreement," in addition to agreeing with the ALJ's note that Respondent "failed to properly pursue legal remedies of appeal … ," and the ALJ's assessment that Respondent "resorted to 'self-help,'" Petitioner notes that the ALJ was incorrect in concluding that Respondent's "self-help" did not give rise to an ethical violation under the Act or Code. Petitioner argues that the Code is clear and "[d]esired changes shall be brought about only through legal and ethical procedures." *N.J.S.A.* 18A:12-24.1(a).

Petitioner again argues that by calling the special meeting, voting to authorize the payment of tuition to Port Jervis and defying the directives, Respondent did not "consult" the DOE about her decision to take the law into her own hands and did not "consult with taxpayers who would bear the costs of her resort to 'self-help' remedies." Therefore, Respondent violated *N.J.S.A.* 18A:12-24.1(c) because she did not "confine her board action to policy making, planning … only after the board has consulted those who will be affected by them," and violated *N.J.S.A.* 18A:12-24.1(f) because Respondent used her position as Board President for "personal gain" and to benefit her child, as well as "surrender[ed] [her] independent judgment to special interest … groups," specifically, the "pro-Port" group within Montague that was "pushing the Montague Board to disregard the DOE's decisions" regarding the send-receive agreement.

As to the penalty, the Petitioner asserts that because Respondent is no longer a Board member, the only sanctions available are reprimand and censure. Accordingly, Petitioner argues that "the Commission and the Commissioner have held when a [school board member] votes on a matter after a State entity expressly advises [him or her] not to do so," or when a school board member directly defies "the Commissioner's decision and directives," these actions warrant a censure. Furthermore, Petitioner defends that "a school board member's sincere disagreement with those decisions – regardless of whether her objections have merit – does not relieve her of her obligation to abide by the DOE's directives or to seek redress through the proper legal channels." Therefore, Petitioner maintains that, "at a minimum," Respondent's conduct warrants a reprimand.

Finally, Petitioner contends that the Initial Decision does not address the statutes and case law and, therefore, should be rejected. Petitioner maintains that ALJ Cookson highlighted "two significant facts of dubious legal significance": (1) "the relationship by and between Montague,

Port Jervis and High Point needed to be litigated and were resolved in a Settlement Agreement adopted by the Commissioner;" and (2) "Johnson acted with the near unanimous consent of the other Board members, of whom [Complainant] found no basis to complain." In further support of rejection, Petitioner notes that the statements contained in the Initial Decision, "[a]s is universal, Board members vote in a manner on agenda items that matter to them, that they ran on during their election, and that they feel passionate about. Complainant did similarly during her tenure" and "these proceeding stem from a complicated and multi-sided dispute that involved potential legal errors, potential attorney conflicts, strong differences of opinions on the wisdom of certain send-receive relationships, and personal animosities" are "of questionable legal relevance" and "veers off into an analysis rooted in considerations that are not legally relevant to the allegations against Respondent." Respondent's actions as described (special meeting, voting and defiance), while serving as the Board President "play a significant role in leading the Board to defy the DOE's directives and disregard the Commissioner's decisions concerning" the send-receive relationship, and support the allegations that Respondent violated the Act and the Code.

2. Respondent's Reply to Petitioner's Exceptions

In Respondent's reply to Petitioner's Exceptions, which were filed on December 17, 2019, she defends that her "actions were necessitated by the [Act] because the 'transition plan' left by the previous Montague Board flagrantly violated law and harmed the educational welfare of Montague's children." According to Respondent, *N.J.S.A.* 18A:38-21.1 states, "Any secondary school student in the sending district at the time of the termination of the sending-receiving relationship shall be permitted to complete his secondary education within the receiving district." Therefore, "[t]he sending-receiving relationship shall be continued for these students." Respondent argues that Montague's transition plan "flagrantly violated that statute" and that Petitioner did not "suggest otherwise." Respondent further defends that she initially sent correspondence to the Commissioner in 2014, which cited and quoted the statute above, one year before becoming a Board member (January 2015). Respondent argues that "the DOE has yet to acknowledge the existence of this statute" and that Petitioner did not mention the statute in the Exceptions, "even though it lies at the heart of [Respondent's] defense." Respondent asserts that *N.J.A.C.* 6A:32-2.1 provides that "[s]econdary means grades nine through 12 in all high schools; grades seven and eight in junior high schools; grades seven, eight, and nine in middle schools; and grades seven and eight in elementary schools having departmental instruction." Furthermore, Mr. Bumpus testified that a secondary student "includes seventh and eighth graders … it's a programmatic definition that secondary students are grades six through twelve." Therefore, Respondent and the entire Board were required to ensure the send-receive relationship between Montague students and Port Jervis be continued, and acting in contradiction to that agreement would have involved the Board violating their oaths, specifically, "to uphold and enforce all laws, *N.J.S.A.* 18A:12-24.1(a)."

Respondent further argues that it was not necessary to file a petition of appeal prior to September of 2015, because "a school board does not need to file a petition of appeal asking the Commissioner whether it needs to uphold and enforce a valid, duly enacted state statute." Respondent defends that Board members are required to "make decisions in terms of the educational welfare of children *N.J.S.A.* 18A:12-24.1(b)," and the new send-receive agreement with High Point would have "harmed the educational welfare of Montague's children."

Respondent would have "breached her solemn obligation to Montague's children had she implemented the transition plan."

In further defense of her actions, Respondent asserts that in 2015 the Board "inherited an unprecedented legal and ethical disaster" that "[n]o amount of training or experience could possibly have prepared a board president for …" In addition, Cherie Adams, Board counsel, who represented both Montague and High Point, sent a letter, not a petition of appeal, to the Commissioner requesting that he terminate Montague's send-receive agreement with Port Jervis, and then asked permission for Montague's students to attend High Point. As a result of her conflict, Ms. Adams was terminated, and new counsel was hired months before the new send-receive agreement with High Point was to take effect. In June 2015, Port Jervis notified Montague they would sue for breach of contract because Montague did not provide written notice that it was cancelling its send-receive agreement with Port Jervis (which led to filing a suit in federal court). "Had Montague implemented the transition plan, it would have breached its contract with Port Jervis and exposed itself to a [lawsuit]."

Respondent also argues that she "faithfully discharged her responsibilities," including contacting Executive County Superintendent Lamonte, taking meetings with DOE officials with Board counsel present and sharing information with the Board. Furthermore, decisions were made "collectively, by the board as a whole, after each board member had input … After decisions were made, the public was made aware of them and provided the reasons." However, Respondent was the only Board member to have an ethics complaint filed against her. Moreover, the Commissioner approved and endorsed a settlement that "applied the law that [Respondent] was trying to uphold, a dual send-receive agreement, which allowed Montague students to attend either Port Jervis or High Point. The settlement agreement, as well as the Commissioner's endorsement, "confirmed that [Respondent] upheld and enforced the law, protected Montague's children and discharged her responsibilities as a board member in a manner consistent with the [Act]." According to Respondent, Petitioner failed to "[s]pecify the findings of fact where [ALJ Cookson] was mistaken" and failed to specify "the conclusions of law where [ALJ Cookson] erred" and, therefore, Petitioner failed to demonstrate that Respondent breached the Act and Code.

Respondent also defends that "all board members … have some sort of financial relationship with their districts." They do not violate the Act "whenever they make a decision regarding the district." Pursuant to *N.J.S.A.* 18A:12-24(h), "[n]o school official shall be deemed in conflict with these provisions if, by reason of [her] participation in any matter required to be voted on, … ." Respondent's child was one of approximately 35 students who were permitted to attend Port Jervis High School. Respondent's child "was no better or worse off compared with his peers as a result of" Respondent's actions and the actions of the Board in 2015. In addition, Respondent rejected the "legacy" settlement proposal, which would have allowed Respondent's child and the children of only two other families to attend Port Jervis High School, "because it wasn't following the law."

Respondent argues she did not violate *N.J.S.A.* 18A:12-24(b), she and the Board were "upholding and enforcing" *N.J.S.A.* 18A:38-21.1, "in accordance with their legal and ethical obligations." Respondent also argues that Petitioner "misconstrues the case law it relies upon in

its Exceptions, namely, *I/M/O Rhonda Williams Bembry*, Hackensack Board of Education, Bergen County (*Bembry*), because unlike *Bembry*, Respondent 'has no disciplinary history' and '*Bembry* was not acting in furtherance of a duly enacted state statute.'"

Respondent also argues she did not violate *N.J.S.A.* 18A:12-24(c) and notes that Petitioner ignores several factors, more specifically, "that [Respondent] consulted with" the Board's Vice President when she called the meetings, "the send-receive contract with Port Jervis, the fact that Montague never provided written notice withdrawing from the contract, or that Port Jervis threatened to sue Montague for breaching the contract, the dual send receive 'global agreement' that the Commissioner" approved and endorsed, that High Point "withdr[ew] its opposition to Montague making tuition payments for the [ninth] and [tenth] grade students." Respondent "retained her independent judgment" and Petitioner did not present anything to suggest that Respondent "abdicated it for her gain or the gain of others."

Respondent denies that she violated *N.J.S.A.* 18A:12-24(f) and for the "reasons already set forth [asserts] this argument is meritless."

Respondent denies that she violated *N.J.S.A.* 18A:12-24.1(a), because as stated above, Respondent's actions and the Board's actions were "mandated by *N.J.S.A.* 18A:12-24.1(a) in light of *N.J.S.A.* 18A:38-21.1, the educational welfare of Montague's children being harmed, and the contract with Port Jervis which was governed by and construed in accordance with the laws of the State." Moreover, Petitioner "relies upon the notion of 'self-help' that [ALJ Cookson] mentioned in her decision," which "over simplifies the situation and ignores how events unfolded in real time." Ultimately, "nothing like this has ever happened before," and it is "grossly unfair to critique [Respondent] or this board with the benefit of hindsight and an opportunity for reflection." Respondent notes that the DOE "consistently ignored *N.J.S.A.* 18A:38-21.1," as well as "Montague's plea that they were in peril of being sued by Port Jervis." Respondent and the Board could not ignore the law as well.

Respondent asserts she did not violate *N.J.S.A.* 18A:12-24.1(c). Respondent argues that the entire Board was involved in this matter, the Act "was not designed to be weaponized and selectively applied to one woman out of seven board members." As mentioned, Respondent consulted with the vice president, Respondent did not make the motion and the Resolution passed unanimously. In addition, calling a special meeting, speaking on behalf of the Board, and passing resolutions are all responsibilities of a board member/board president.

Respondent denies violating *N.J.S.A.* 18A:12-24.1(f) and states this argument is without merit. Respondent concludes that for the reasons named above, "Petitioner failed to meet its burden of demonstrating" that Respondent violated the Act or the Code and, therefore, the "SEC should adopt and endorse" ALJ Cookson's conclusions.

3. Petitioner's Response to Respondent's Reply

In Petitioner's response to Respondent's reply, which were filed on January 2, 2020, Petitioner requests that the Commission reject Respondent's "proposition and reaffirm the duty of every school board member to abide by the Department's decision, or, alternatively, to

challenge those decisions in the customary legal fora." Petitioner maintains that "Respondent's conduct warrants a censure, or, at a minimum, a reprimand."

Petitioner refutes the following defenses from Respondent's Exceptions: (1) Respondent's justification that she was "obligated" by law to "disregard the Commissioners' decision," and that "[a] school board does not need to file a petition of appeal asking the Commissioner whether it needs to uphold and enforce a valid, duly enacted state statute," according to Petitioner, "only reinforces the impropriety of Respondent's resort to self-help." Petitioner maintains that "the right to mediate perceived conflicts between [NJ] law and the Commissioner's decisions belongs to the courts and to administrative agencies acting as adjudicative bodies." Respondent is not permitted to disobey the Commissioner's decision based on her interpretation of the law. Furthermore, Respondent also did not have the right to decide whether Montague was liable for breach of contract and her decision not to file a petition of appeal because it "would have been an exercise in futility," is not an excuse "for her failure to avail herself of the appropriate legal remedies." (2) Respondent's reliance on the settlement agreement is misplaced. Petitioner maintains that the intention of the settlement agreement was to resolve "the various disputes between Montague, High Point and Port Jervis" and the Commissioner's "approval of the agreement merely gave effect to the parties' negotiated settlement." It was not intended, as Respondent believes, to justify her "disregard[] of multiple warnings from the Department and the Commissioner's decision" related to the send-receive relationship between Montague, High Point and Port Jervis. (3) Respondent's reliance on *N.J.S.A.* 18A:12-24(h) is misplaced and Respondent has not offered "evidence that she was 'required' to vote on the resolution authorizing the payment of tuition to Port Jervis." According to Petitioner, Respondent benefitted from the resolution as a Board member with a "financial stake in the outcome." However, *N.J.S.A.* 18A:12-24(h) "is aimed at protecting members of concrete and identifiable social and economic groups," which does not include Respondent and, therefore, does not apply. (4) Respondent has misinterpreted the reference to "unwarranted" as it relates to *N.J.S.A.* 18A:12-24(b). The "advantages that the resolution conferred on Respondent were 'unwarranted' because of Respondent's financial stake in the outcome and her resort to self-help" and does not "alter the analysis in this case." (5) Respondent is "mistaken" in her analysis of *Bembry*. Specifically, *Bembry's* "defiance" of the Commission "was clearly a factor in the decision to impose a sanction, and similarly that "precedent should inform the Commission's decision in this case." Based on these reasons, Petitioner affirms Respondent violated the Act and the Code "by resorting to self-help in a matter which she had a financial interest" and, therefore, Respondent should receive the appropriate sanction.

4. Complainant's Exceptions

Complainant did not file Exceptions to the Initial Decision or otherwise file a reply to the Exceptions filed by Petitioner and/or Respondent.

IV. Analysis

For the reasons more fully detailed below, and following a careful, thorough, and independent review of the complete record, including all of the testimonial and documentary evidence, the Commission **modifies** ALJ Cookson's "finding" that, when she attended the Port

Jervis board meeting, Respondent "merely introduced herself, described the attorney RFP [Request for Proposal] process for replacing [the attorney] who had dual[ly] represented Montague and High Point, and suggested that the boards meeting personally of communicating through counsel…," **rejects** ALJ Cookson's "finding" that, "[o]n the basis of the preponderance of the credible evidence, Respondent never used her position to obtain a personal benefit for herself or her family", and **accepts** all other findings of fact.

1. Findings of Fact

Upon a careful, thorough, and independent review of the complete record, including all of the testimonial and documentary evidence, the Commission **modifies** ALJ Cookson's "finding" that, when she attended the Port Jervis board meeting, Respondent "merely introduced herself, described the attorney RFP [Request for Proposal] process for replacing [the attorney] who had dual[ly] represented Montague and High Point, and suggested that the boards meet personally instead of communicating through counsel…," to **additionally include** that Respondent indicated, on behalf of the Board, "we were looking to a corrective action because we believed that prior boards didn't follow procedures as were outlined [in *N.J.A.C.* 6A and *N.J.S.A.* 18A] and that hopefully, you know, we could continue a relationship with Port Jervis." Tr. at 139-140 (June 17, 2019).

Following a careful, thorough, and independent review of the complete record, including all of the testimonial and documentary evidence, the Commission also **rejects** ALJ Cookson's "finding" that, "[o]n the basis of the preponderance of the credible evidence, [Respondent] never used her position to obtain a personal benefit for herself or her family." *Initial Decision* at 13. As an initial matter, the Commissions finds that this "finding of fact" is more accurately characterized as a "legal conclusion"; nonetheless, the Commission finds the record supports a finding and determination that Respondent did use her position to obtain a personal benefit for both herself and a member of her immediate family, namely her child.

As soon as February 18, 2015, Respondent began advising, in writing, that despite the Commissioner's previously issued decisions, "***[my child] will not be going to High Point as we are planning for him to continue in Port [Jervis] ….***" P-11 (emphasis added). At the time Respondent wrote this email message to her child's guidance counselor, the Board had not authorized the sending of its students to Port Jervis.

Additionally, the Board received correspondence from Lamonte dated April 20, 2015, which specifically said, "*If there are any parents who wish to send their children to Port Jervis … please note that* ***these parents would be responsible for tuition payments to Port Jervis. Montague is not responsible for tuition payments for students attending school in which there is no send-receive agreement in effect*** …" P-4 (emphasis added). Nevertheless, Respondent sent correspondence to multiple Port Jervis administrators on August 7, 2015, advising, "As the 2015/2016 school year is approaching, I am exercising the right afforded to us, whereby ***my child is to continue receiving an education in … Port Jervis … from this point forward through graduating 12th grade …*** ." P-4 (emphasis added); P-8, P-9, and P-10 (emphasis added).

In furtherance of her mission to ensure her child's attendance in Port Jervis for high school, at a special Board meeting on August 13, 2015, Respondent voted in favor of a resolution which authorized Montague students and families to enroll their children in Port Jervis. R-10. Moreover, in correspondence dated August 18, 2015, to the Board, Bumpus warned that the Board's action at its meeting on August 13, 2015, "contradicts prior decision by the Commissioner," and reiterated that, ***"Montague will not be responsible for tuition payments for students attending school in Port Jervis … and any Montague parent who decides to send their child to Port Jervis in September, inconsistent with the established transition plan … will be responsible for tuition payments to Port Jervis***." P-5 (emphasis added). Despite having received said correspondence, Respondent voted, at another special meeting on August 25, 2015, in favor of a resolution which obligated the Board to satisfy all tuition obligations for those Montague students, including her own, who chose to enroll in Port Jervis for the 2015-2016 school year. P-6.

Because the record is clear that Respondent wanted her child to attend Port Jervis *regardless* of any contrary decision from the Commissioner, Respondent unquestionably used her position as a Board member, and Board President, to obtain a personal benefit for both herself and her child when she voted in favor of a Resolution which permitted her child to attend his preferred school, and which relieved her of any and all financial obligation for his attendance in an unauthorized school district. At the time of her vote, the Board had received not one, but two separate pieces of correspondence which advised that if parents chose, contrary to Commissioner's decisions, to send their children to Port Jervis, they would need to pay the tuition associated with their child's attendance at Port Jervis. By voting in favor of the at-issue Resolution, Respondent ensured that the Board would satisfy this financial obligation for her, and thus relieved her of this financial burden.

In addition, the Commission **rejects** ALJ Cookson's "finding" that, "[o]n the basis of the preponderance of the credible evidence, [Respondent] never used her position to obtain a personal benefit for herself or her family." *Initial Decision* at 13. As an initial matter, the Commission finds that this "finding of fact" is more accurately characterized as a "legal conclusion"; nonetheless, the Commission finds the record supports a finding and determination that Respondent did use her position to obtain a personal benefit for both herself and a member of her immediate family, namely her child.

Except as stated herein, the Commission **accepts** all other findings of fact.

2. Legal Conclusions

For the reasons more fully detailed below, and following a careful, thorough, and independent review of the complete record, including all of the testimonial and documentary evidence, the Commission **adopts** the legal conclusion that Respondent did not violate *N.J.S.A.* 18A:12-24.1(e) or *N.J.S.A.* 18A:12-24.1(f) as alleged in Count 1 of C14-15; **adopts** the legal conclusion that Respondent did not violate *N.J.S.A.* 18A:12-24.1(b) or *N.J.S.A.* 18A:12-24.1(d) as alleged in Count 2 of C14-15; **rejects** the legal conclusion that Respondent did not violate *N.J.S.A.* 18A:12-24.1(c), *N.J.S.A.* 18A:12-24.1(e), or *N.J.S.A.* 18A:12-24.1(f) as alleged in Count 2 of C14-15; **rejects** the legal conclusion that Respondent did not violate *N.J.S.A.* 18A:12-24(b),

N.J.S.A. 18A:12-24(c), *N.J.S.A.* 18A:12-24(f), *N.J.S.A.* 18A:12-24.1(a), *N.J.S.A.* 18A:12-24.1(c), or *N.J.S.A.* 18A:12-24.1(f) in C08-16; and, having found violations of the Act in C08-16, **rejects** ALJ Cookson's determination that the consolidated matter should be dismissed and the Commission's probable cause order should be reversed.

In rejecting ALJ Cookson's legal conclusions, the Commission finds that Complainant has proven, by a preponderance of the credible evidence, that Respondent violated *N.J.S.A.* 18A:12-24.1(c), *N.J.S.A.* 18A:12-24.1(e), and *N.J.S.A.* 18A:12-24.1(f) as alleged in Count 2 of C14-15. The Commission further finds that Petitioner has proven, by a preponderance of the credible evidence, that Respondent violated *N.J.S.A.* 18A:12-24(b), *N.J.S.A.* 18A:12-24(c), *N.J.S.A.* 18A:12-24(f), *N.J.S.A.* 18A:12-24.1(a), *N.J.S.A.* 18A:12-24.1(c), and *N.J.S.A.* 18A:12-24.1(f) in C08-16.

SEC Docket No.: C14-15
(Remaining Allegations in Count 1)

In this Count, it is alleged that, on or about February 18, 2015, Respondent sent an email to her child's guidance counselor, with blind copies to other district parents, concerning her child's decision not to complete paperwork for the selection of classes at High Point for the 2015-2016 school year. *Initial Decision* at 2. Based on these facts, Complainant alleges that Respondent violated *N.J.S.A.* 18A:12-24.1(e) and *N.J.S.A.* 18A:12-24.1(f).

***N.J.S.A.* 18A:12-24.1(e)** requires Board members to comply with the following, "I will recognize that authority rests with the board of education and will make no personal promises nor take any private action that may compromise the board." Pursuant to *N.J.A.C.* 6A:28-6.4(a)(5), factual evidence of a violation of ***N.J.S.A.* 18A:12-24.1(e)** shall include evidence that Respondent made personal promises or took action beyond the scope of her duties such that, by its nature, had the potential to compromise the board. Because there is no evidence to support a position that Respondent's email was sent or made in her capacity as a Board member and/or as the Board President, the Commission **adopts** ALJ Cookson's determination that "[R]espondent did not send or intend that email in any role other than as a parent on her son's behalf," and **adopts** the conclusion that Respondent did not violate *N.J.S.A.* 18A:12-24.1(e) as alleged. *Initial Decision* at 15.

***N.J.S.A.* 18A:12-24.1(f)** compels Board members to abide by the following: "I will refuse to surrender my independent judgment to special interest or partisan political groups or to use the schools for personal gain or for the gain of friends." As set forth in *N.J.A.C.* 6A:28-6.4(a)(6), factual evidence of a violation of ***N.J.S.A.* 18A:12-24.1(f)** shall include evidence that Respondent took action on behalf of, or at the request of, a special interest group or persons organized and voluntarily united in opinion and who adhere to a particular political party or cause; or evidence that Respondent used the schools in order to acquire some benefit for herself, a member of her immediate family or a friend. Since there is insufficient evidence to support a finding that Respondent's email was sent to acquire a benefit for herself or her child, and appears to be nothing more than an advisement of her intention, as a parent, to continue sending her child to Port Jervis, the Commission **adopts** the legal conclusion that Respondent did not violate *N.J.S.A.* 18A:12-24.1(f) as alleged.

SEC Docket No.: C14-15
(Remaining Allegations in Count 2)

In this Count, it is contended that Respondent's attendance at a Port Jervis board meeting in her capacity as President of the Board violated *N.J.S.A.* 18A:12-24.1(b), *N.J.S.A.* 18A:12-24.1(c), *N.J.S.A.* 18A:12-24.1(d), *N.J.S.A.* 18A:12-24.1(e), or *N.J.S.A.* 18A:12-24.1(f). *Initial Decision* at 2.

***N.J.S.A.* 18A:12-24.1(b)** obligates Board members to abide by the following: "I will make decisions in terms of the educational welfare of children and will seek to develop and maintain public schools that meet the individual needs of all children regardless of their ability, race, creed, sex, or social standing." Pursuant to *N.J.A.C.* 6A:28-6.4(a)(2), factual evidence of a violation of ***N.J.S.A.* 18A:12-24.1(b)** shall include evidence that Respondent willfully made a decision contrary to the educational welfare of children, or evidence that Respondent took deliberate action to obstruct the programs and policies designed to meet the individual needs of all children, regardless of their ability, race, color, creed or social standing. Because there is no evidence to support a finding that Respondent's attendance at the Port Jervis board meeting satisfies the elements of this charge, the Commission **adopts** the legal conclusion that Respondent did not violate *N.J.S.A.* 18A:12-24.1(b) as alleged.

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

When Respondent attended the Port Jervis board meeting and indicated that the Board was "looking to a corrective action" and wanted to "continue a relationship with Port Jervis," and did so at a time when the Board had not filed an appeal of the Commissioner's decisions or formally challenged the decisions, Respondent exceeded the scope of her authority and took action unrelated to her duties and responsibilities. In addition, as the Board President, Respondent is charged with safeguarding and protecting the interests of her own Board, and has no obligation to quell the contractual concerns of another Board (Port Jervis), especially when those assurances were publicly made to the detriment of another Board (High Point) and flouted previously issued Commissioner decisions. The fact that Respondent may have had "permission" from her fellow Board members to make these statements does not absolve Respondent of her unethical behavior. Accordingly, Commission **rejects** the legal conclusion that Respondent did not violate *N.J.S.A.* 18A:12-24.1(c) as alleged.

***N.J.S.A.* 18A:12-24.1(d)** compels Board members to abide by the following: "I will carry out my responsibility, not to administer the schools, but, together with my fellow board

members, to see that they are well run." Pursuant to *N.J.A.C.* 6A:28-6.4(a)(4), factual evidence of a violation of ***N.J.S.A.* 18A:12-24.1(d)** shall include, but not be limited to, evidence that Respondent gave a direct order to school personnel or became directly involved in activities or functions that are the responsibility of school personnel or the day-to-day administration of the school district or charter school. As there is insufficient evidence to support a finding that Complainant sustained her burden, the Commission **adopts** the legal conclusion that Respondent did not violate *N.J.S.A.* 18A:12-24.1(d) as alleged.

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

Although ALJ Cookson concluded that Respondent acted in her official capacity as Board President when she attended the Port Jervis board meeting, and that she had "full authority of the other Board members" to attend the meeting, neither Respondent, nor any other individual Board member, has the authority to represent that the Board was seeking "corrective action," when it was not, and to indicate that the Board wanted to continue a relationship specifically severed by the Commissioner. Tr. at 139-140 (June 17, 2019). At the time of her statements, and because Respondent was "suggesting" action which defied the Commissioner's previously issued decisions and publicly declared that the Board would potentially violate its send-receive agreement with High Point, Respondent took action beyond the scope of her duties as a Board member.

In addition, because, Respondent was personally involved in ensuring the continued attendance of Montague students in Port Jervis, as evidenced by her February 2015 email to her child's guidance counselor, Respondent was not objective in this issue and, therefore had a conflict of interest requiring her recusal. By indicating a willingness to defy a Commissioner decision, and immersing herself, in her capacity as Board President, in an issue in which she had a clear and palpable conflict of interest, Respondent's actions had the potential to compromise the Board. The fact that the other members of the Board condoned her unethical behavior does not mean that Respondent did not violate the Act. Therefore, the Commission **rejects** the legal conclusion that Respondent did not violate *N.J.S.A.* 18A:12-24.1(e) as alleged.

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

Once again, and even though, as ALJ Cookson found, Respondent acted in her official capacity as Board President when she attended the Port Jervis board meeting, and had "full authority of the other Board members" to attend the meeting, Respondent's personal feelings about the continued attendance of Montague students in Port Jervis could not be extricated from her duty to make decisions, or take actions, on behalf of the Board. By attending the Port Jervis meeting and "suggesting" a continued relationship that was severed by the Commissioner, Respondent set in motion action which would allow her child to receive exactly what he/she wanted, namely attendance at a school that her child "wanted" to attend. The fact that Respondent had the authority of the other members of the Board to attend the meeting does not relieve Respondent of the obligation to recognize her own conflicts of interest, and to recuse from those matters, as here, where she cannot be objective and exercise independent judgment. As such, the Commission **rejects** the legal conclusion that Respondent did not violate *N.J.S.A.* 18A:12-24.1(f) as alleged.

SEC Docket No.: C08-16
(Remaining Allegations)

In this Complaint, it is asserted that Respondent, in her capacity as Board President, engaged in actions to ensure that the Board's students, including her own child, would be permitted to continue attending Port Jervis until graduation from high school, and that the Board would be obligated to pay the tuition associated with such attendance. *Initial Decision* at 3. Based on her actions, Complainant asserts that Respondent violated *N.J.S.A.* 18A:12-24(b), *N.J.S.A.* 18A:12-24(c), *N.J.S.A.* 18A:12-24(f), *N.J.S.A.* 18A:12-24.1(a), *N.J.S.A.* 18A:12-24.1(c), and *N.J.S.A.* 18A:12-24.1(f).

Based on the complete record, including all of the testimonial and documentary evidence, the remaining allegations in this consolidated matter involve simple, clear, straightforward, and undisputed facts. Following an application from the Board dated June 18, 2013, Commissioner Cerf advised the Board, in correspondence dated June 24, 2013, that he (1) withdrew his consent for the Board to allow its high school students to attend Port Jervis and (2) permitted the Board to enter into a new send-receive with High Point. P-1; *Initial Decision* at 4. As a result of this correspondence, and on or about August 13, 2013, the Board and High Point negotiated the terms of a new send-receive agreement whereby the Board would begin sending its high school students, beginning with incoming ninth graders, to High Point (as opposed to Port Jervis) effective September 1, 2014. P-3.

By correspondence dated November 19, 2014, and following an application from the Board dated October 17, 2014, Commissioner Hespe also granted the Board's request to terminate its send-receive relationship with Port Jervis for its seventh and eighth grade students. P-2. Critically, the concluding sentence of this letter stated, "[b]eginning with the 2015-2016 school year, all students in grades kindergarten through eight will attend [the District's schools], and ***all students in grades nine through twelve will attend High Point…, consistent with the agreed upon transition plan***." P-2 (emphasis added).

At some point in 2014, and before she was re-elected to the Board in November, Respondent, who then identified as a "former" Board member and "member of the Montague

BOE Transition Advisory Panel," sent a letter to Commissioner Hespe which requested, in relevant part, that he consider her (Respondent's) request to "reconsider the decision(s) made by [Commissioner Hespe's] predecessor, ***and in order to right the wrongs which have been forced upon us and our children***…" R-2 (emphasis added); *see also* Tr. at 64-67 (June 17, 2019). Based on the arguments set forth in her letter, Respondent indicated that, "the contract with High Point should be null and void, or at least put on hold, thereby allowing the partial contract Montague … is still honoring with Port Jervis … ***to be in full effect*** and Montague BOE's partial termination [with Port Jervis] ***to be rescinded***." *Id.* (emphasis added); *see also* Tr. at 64-67 (June 17, 2019). Respondent also claimed, "any student entering 7th or 8th grade in [Port Jervis] … must be allowed to continue in [Port Jervis] throughout high school." *Id.* When Commissioner Hespe indicated he could not discuss the issue(s) with her because of litigation, Respondent sent similar email messages to Lamonte. R-3 and R-4; *see also* Tr. at 68-70 (June 17, 2019).

Respondent, who previously served on the Board from 2004 through 2007, was elected to the Board in 2014, and her term began with the Board's reorganization meeting in January 2015. *Initial Decision* at 11.

Respondent's child was in 8th grade during the 2014-2015 school year, and "***was upset at being told that he had to pick High Point high school classes for the next year when he wanted to continue to attend Port Jervis***." *Initial Decision* at 12 (emphasis added). Furthermore, and in an e-mail dated February 18, 2015 to her child's guidance counselor, Respondent stated, **"*[my child] will not be going to High Point as we are planning for him to continue in Port [Jervis]* ….**" P-11 (emphasis added). During her testimony, Respondent acknowledged that, at the time of her email, she was aware that the Commissioner had withdrawn his consent for the send-receive relationship between Montague and Port Jervis for high school students. Tr. at 158 (June 17, 2019).

In correspondence dated April 20, 2015, after Respondent was elected to the Board and nominated to serve as Board President, Lamonte advised the Board, in pertinent part:

> To date we are aware that several parents have communicated with … High Point … stating that they do not wish their current 8th grade students to participate in freshman orientation activities as the parents intend to enroll their students in … Port Jervis … for the 2015-2016 school year. …
>
> Please be advised that the above actions ***are not in compliance with the Commissioner's prior decisions regarding this issue, dated June 24, 2013, and November 19, 2014*** …
>
> The Board *is* ***reminded that it has an obligation to abide by its send-receive agreement with High Point and the Commissioner fully expects the districts to comply with the transitions plans that have been developed for grades 7 through 12***.
>
> ***If there are any parents who wish to send their children to Port Jervis outside of the agreed transition plans, please note that these parents would be responsible***

> ***for tuition payments to Port Jervis. Montague is not responsible for tuition payments for students attending school in which there is no send-receive agreement in effect*** …
>
> [The Executive County Business Official and I] again extend an invitation to [Respondent] to any members of appropriate board committees to meet with us so that any concerns or questions of the Board may be addressed.

P-4 (emphasis added).

In separate correspondence dated August 7, 2015, to the Transportation Coordinator, the Director of Student Services, and the Director of Registration for Port Jervis, Respondent stated, "As the 2015/2016 school year is approaching, I am exercising the right afforded to us, whereby ***my child is to continue receiving an education in … Port Jervis … from this point forward through graduating 12th grade … .***" P-8, P-9, and P-10 (emphasis added).

At a special Board meeting on August 13, 2015, the Board "resolved" to "approve the enrollment of Montague students in Port Jervis, High Point or Montague." R-10. More specifically, and as set forth in "AD-1":

> Because of the actions of prior Boards, we find ourselves presently in a legal dilemma that will put us in jeopardy of being sued by both Port Jervis and High Point. Our investigation has shown, Commissioners of Education Cerf and Hespe, were misled and misinformed and also not provided with all relevant facts in the prior requests to revoke consent. … Port Jervis … was never given notice of the request to withdraw consent. …
>
> THEREFORE BE IT RESOLVED **the Montague students and families are authorized to continue or enroll their children in Port Jervis, High Point, or Montague schools as appropriate**.
> …

Id. (emphasis added). Although Respondent did not move, or second, this action, she did vote in favor of it. *Id*.

Following the Board's special meeting on August 13, 2015, and by correspondence dated August 18, 2015, Bumpus sent correspondence to the Board, which included Respondent, and advised, among other things:

> It has come to our attention that the … Board … intends to authorize families of children entering grades 9-12 the choice of attending high school in either High Point, New Jersey, or Port Jervis, New York, and to authorize families of children entering 7th grade to choose between attending Montague … or … Port Jervis. The Board's recent actions are troubling ***as they contradict prior decisions by the Commissioner … regarding Montague's send-receive relationships***.

> As you are aware, on June 24, 2013, the Commissioner … granted permission for Montague to enter into a new send-receive relationship with High Point … for grades 9-12, with 9th graders beginning to attend High Point in September 2014. Further, on November 19, 2014, the Commissioner…granted Montague's request to terminate its send-receive relationship with Port Jervis for its 7th and 8th graders … As you are further aware, ***there has been no subsequent ruling by the Department which overturned these prior decisions***.
>
> As such, the Department … ***expects the Board to adhere to the terms of its send-receive relationship with High Point, and further expects the Board to comply with the plans for educating 7th and 8th graders within the District. As previously communicated to you, Montague will not be responsible for tuition payments for students attending school in Port Jervis given that the Commissioner has determined the conditions that warranted the send-receive relationship between Montague and Port Jervis have ceased to exist. Accordingly, any Montague parent who decides to send their child to Port Jervis in September, inconsistent with the established transition plan … will be responsible for tuition payments to Port Jervis***.
>
> If the Board fails to adhere to its obligations under the send-receive with High Point when the new school year beings in September, the Department may take any action within the Commissioner's statutory and regulatory authority …

P-5 (emphasis added).

At a special Board meeting on August 25, 2015, the Board passed a Resolution which stated, in relevant part:

> WHEREAS the … Board … passed a resolution on August 13, 2015, authorizing families to enroll their children in either Montague, Port Jervis, or High Point schools as appropriate; and
>
> WHEREAS the … Board … currently remains contractually obligated to both Port Jervis … and High Point …; and
>
> WHEREAS the … Board … has previously advised … Port Jervis … that it intends to satisfy all tuition obligations on behalf of Montague [s]tudents enrolling in Port Jervis for the 2015/2016 school year; and
>
> WHEREAS questions have arisen regarding the … Board['s] … commitment in that regard;
>
> NOW THEREFORE BE IT RESOLVED that the … Board… ***shall satisfy all tuition obligations on behalf of Montague Students enrolling in Port Jervis for the 2015/2016 school year***.

P-6 (emphasis added). Although the record is clear that Respondent did not move, or second this Resolution, the record is clear that Respondent voted in favor of it. P-6.

There are no other facts which are relevant to the remaining allegations in C08-16. Whether the Board's application and request to sever its send-receive agreement with Port Jervis in favor of a send-receive agreement with High Point satisfied all applicable statutory and regulatory provisions; whether Respondent (or the Board) believed that the Board failed to comply with the termination provision of its contract with Port Jervis; whether Lamonte believed there were "some valid points to the Board's arguments about the Port Jervis contract"; whether there was litigation which ultimately resulted in a settlement agreement between the involved parties; how Respondent voted in connection with that settlement agreement; whether it is believed that the within consolidated matter should have been resolved as part of the litigation; and why Respondent was the only Board member against whom ethics charges were filed is immaterial to the determination of whether Respondent, as alleged, violated *N.J.S.A.* 18A:12-24(b), *N.J.S.A.* 18A:12-24(c), *N.J.S.A.* 18A:12-24(f), *N.J.S.A.* 18A:12-24.1(a), *N.J.S.A.* 18A:12-24.1(c), and *N.J.S.A.* 18A:12-24.1(f). If anything, these facts only serve to mitigate Respondent's violations.

With the above in mind, in order to find a violation of ***N.J.S.A.* 18A:12-24(b)**, the Commission must find evidence that Respondent used or attempted to use her official position to secure an unwarranted privilege, advantage or employment for herself, members of her immediate family, or "others." By voting in favor of a Resolution at the August 25, 2015, Board meeting which obligated the Board to bear sole financial responsibility for the tuition associated with attendance by Montague students in an unauthorized school district (Port Jervis), and which relieved Respondent of this personal financial burden/hardship, Respondent used her position to secure an unwarranted privilege and/or advantage, namely "Board permitted" attendance at a school unauthorized by the Commissioner and free tuition for this unauthorized attendance. But for the approval of this Resolution, Respondent would have been obligated to pay, out of pocket, for her child's unauthorized attendance at Port Jervis. Consequently, the Commission **rejects** the conclusion that Respondent did not violate *N.J.S.A.* 18A:12-24(b).

To find a violation of ***N.J.S.A.* 18A:12-24(c)**, the Commission must find evidence that Respondent acted in her official capacity in a matter where she, a member of her immediate family, or a business organization in which she has an interest, had a direct or indirect financial involvement that might reasonably be expected to impair her objectivity, or in a matter where she or a member of her immediate family had a personal involvement that created some benefit to her or to a member of her immediate family. By voting in support of a Resolution at the August 25, 2015, Board meeting which obligated the Board to bear sole financial responsibility for the tuition associated with attendance by Montague students, including her child, in an unauthorized school district (Port Jervis), and which relieved Respondent of this personal financial burden/hardship, Respondent acted in her official capacity (by voting) in a matter where she had a direct or indirect financial involvement that could reasonably be expected to impair her objectivity. The passage of this Resolution obligated the Board and Montague taxpayers, and despite directives from the Commissioner and staff stating otherwise, to bear financial responsibility for the decision of any parent, including Respondent, to send their child to Port Jervis.

Even prior to her tenure on the Board, and based on the correspondence she sent to Commissioner Hespe and Lamonte, Respondent made it clear that the Commissioner's decisions were wrong, and that Montague students should continue attending Port Jervis. In addition, and as evidenced by her email to her child's guidance counselor in February 2015, and in correspondence to administrators at Port Jervis in early August 2015, Respondent made it her mission to secure her child's attendance, regardless of any previous Commissioner decision(s) or directive, in Port Jervis. Seemingly blinded by her quest to send her child to the school her child wanted to attend (Port Jervis), and at any cost, Respondent was not objective in participating, to any extent, on the issue of Montague students continuing to attend Port Jervis and/or the financial responsibility of the Board for this action. Moreover, Respondent had been involved, even prior to her membership on the Board, in continuing to send Montague students, which necessarily included her own 8th grade child, to Port Jervis. As noted *supra*, Respondent and her child received clear benefits from the passage of this Resolution, namely "Board-permitted" attendance at the school her child "wanted" to attend, and free tuition to attend an unauthorized school. Therefore, the Commission **rejects** the conclusion that Respondent did not violate *N.J.S.A.* 18A:12-24(c).

In order to find a violation of ***N.J.S.A.* 18A:12-24(f)**, the Commission must find evidence that Respondent used her public employment, or any information not generally available to the public, and which she received in the course of and by reason of her employment, for the purpose of securing financial gain for herself, her business organization, or a member of her immediate family. Again, by voting in favor of a Resolution at the August 25, 2015, Board meeting which obligated the Board to bear sole financial responsibility for the tuition associated with attendance by Montague students in an unauthorized school district (Port Jervis), and which relieved Respondent of this personal financial burden/hardship, Respondent used her position for the purpose of securing financial gain for herself; more specifically, by voting affirmatively for the Resolution, Respondent used her position to ensure that she did not bear financial responsibility for the tuition associated with her child's attendance at an unauthorized school. Accordingly, the Commission **rejects** the conclusion that Respondent did not violate *N.J.S.A.* 18A:12-24(f).

***N.J.S.A.* 18A:12-24.1(a)** obligates Board members to abide by the following: "I will uphold and enforce all laws, rules and regulations of the State Board of Education, and court orders pertaining to schools. Desired changes shall be brought about only through legal and ethical procedures." Pursuant to *N.J.A.C.* 6A:28-6.4(a)(1), factual evidence of a violation of *N.J.S.A.* 18A:12-24.1(a) shall include a copy of a final decision from any court of law or administrative agency of this State demonstrating that Respondent failed to enforce all laws, rules and regulations of the State Board of Education, and/or court orders pertaining to schools or that Respondent brought about changes through illegal or unethical procedures.

In two separate Commissioner decisions, namely the June 24, 2013, decision from Commissioner Cerf, and the November 19, 2014, decision from Commissioner Hespe, it was unequivocal that Montague students were no longer permitted to attend high school out of State. P-1 and P-2. Despite these clear and unmistakable decisions, and regardless of the follow-up correspondence from Lamonte (the Interim Executive County Superintendent) and Bumpus (an

Assistant Commissioner) affirming those decisions and warning that anyone who sent their children to Port Jervis would be responsible for such tuition, Respondent voted in support of a Resolution which obligated the Board to bear financial responsibility for the tuition associated with attendance by Montague students in an unauthorized school district. During her testimony, Respondent was asked, "Is it fair to say that at [the special meeting on August 25, 2015] the Montague Board took action that was contrary to the directives of the … Commissioner of Education," and she replied, "Yes." Tr. at 155 (June 17, 2019). Also during her testimony, Respondent acknowledged that she voted in favor of the Resolution. Tr. at 157 (June 17, 2019). As such, the Commission **rejects** the conclusion that Respondent did not violate *N.J.S.A.* 18A:12-24.1(a).

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

When Respondent voted to approve a Resolution which obligated the Board to bear sole financial responsibility for the tuition associated with attendance by Montague students at an unauthorized school (Port Jervis), and which relieved her of this financial burden/hardship, Respondent engaged in conduct which was wholly unrelated to her duties and responsibilities as a Board member. Board members are not authorized to deliberately shirk and ignore the mandates of the Commissioner and to authorize attendance at in an unauthorized school district, and then to require the Board to pay for such unauthorized attendance. Such actions are clearly in direct contravention of Commissioner's previously issued decisions. Consequently, the Commission **rejects** the conclusion that Respondent did not violate *N.J.S.A.* 18A:12-24.1(c).

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

Once again, by voting in support of a Resolution which obligated the Board to bear sole financial responsibility for the tuition associated with attendance by Montague students in an unauthorized school district (Port Jervis), and which relieved Respondent of this personal financial burden/hardship, Respondent used the schools in order to acquire a benefit for herself and her child. More specifically, Respondent was not required to pay the tuition associated with

her child's attendance in an unauthorized school district (Port Jervis), and her child was "Board permitted" to attend his/her preferred school. Therefore, the Commission **rejects** the conclusion that Respondent did not violate *N.J.S.A.* 18A:12-24.1(f).

V. Decision

For the reasons more fully detailed above, the Commission determines to **modify** ALJ Cookson's "finding" that, when she attended the Port Jervis board meeting, Respondent "merely introduced herself, described the attorney RFP [Request for Proposal] process for replacing [the attorney] who had dual[ly] represented Montague and High Point, and suggested that the boards meet personally instead of communicating through counsel…," to **reject** ALJ Cookson's "finding" that, "[o]n the basis of the preponderance of the credible evidence, [Respondent] never used her position to obtain a personal benefit for herself or her family", and to **accept** all other findings of fact.

The Commission additionally determines to **adopt** the legal conclusion that Respondent did not violate *N.J.S.A.* 18A:12-24.1(e) or *N.J.S.A.* 18A:12-24.1(f) as alleged in Count 1 of C14-15; **adopt** the legal conclusion that Respondent did not violate *N.J.S.A.* 18A:12-24.1(b) or *N.J.S.A.* 18A:12-24.1(d) as alleged in Count 2 of C14-15; **reject** the legal conclusion that Respondent did not violate *N.J.S.A.* 18A:12-24.1(c), *N.J.S.A.* 18A:12-24.1(e), or *N.J.S.A.* 18A:12-24.1(f) as alleged in Count 2 of C14-15; **reject** the legal conclusion that Respondent did not violate *N.J.S.A.* 18A:12-24(b), *N.J.S.A.* 18A:12-24(c), *N.J.S.A.* 18A:12-24(f), *N.J.S.A.* 18A:12-24.1(a), *N.J.S.A.* 18A:12-24.1(c), or *N.J.S.A.* 18A:12-24.1(f) in C08-16; and, having found violations of the Act in C08-16, the Commission determines to **reject** ALJ Cookson's determination that the consolidated matter should be dismissed and the Commission's probable cause order should be reversed.

VI. Penalty

Based upon its determination that Respondent violated multiple provisions of the Act, the Commission must now turn to the issue of penalty. In its Exceptions, Petitioner argues that "the Commission and the Commissioner have held when a [school board member] votes on a matter after a State entity expressly advises [him or her] not to do so," or when a school board member directly defies "the Commissioner's decision and directives," these actions warrant a censure. Furthermore, Petitioner defends that "a school board member's sincere disagreement with those decisions – regardless of whether her objections have merit – does not relieve her of her obligation to abide by the DOE's directives or to seek redress through the proper legal channels." Therefore, Petitioner maintains, "at a minimum" Respondent's conduct warrants a reprimand.

The Commissioner is the chief executive and administrative officer of the Department, and has "supervision of all schools of the state receiving support or aid from state appropriations … and shall enforce all rules prescribed by the state board." *N.J.S.A.* 18A:4-22 and *N.J.S.A.* 18A:4-23. In recognition of the Commissioner's authority, and as required by applicable statutes and regulations, the Board sought, and received, a decision which rescinded the Commissioner's approval of a send-receive agreement with Port Jervis for its high school students, and permitted the establishment of a new send-receive agreement in favor of High Point. P-1. The Board then

sought, and received, a second decision which rescinded the Commissioner's approval of a send-receive relationship with Port Jervis for its 7th and 8th grade students, so that the students could attend school within the District. P-2.

Boiled down to its essence, when Respondent failed to recuse herself from any and all matters related to the continued send-receive relationship with Port Jervis, she violated the Act. Furthermore, when each member of the Board, including Respondent, voted to authorize sending Montague students to Port Jervis in blatant disregard of Commissioner's decisions, and voted to authorize the Board to bear financial responsibility for this unauthorized attendance, each member of the Board deliberately disregarded Commissioner decisions. Why Respondent was the only Board member against whom ethics charges were filed is of no moment. Moreover, why this consolidated matter was not dismissed as part of the global settlement that was eventually agreed to regarding these issues is also of no moment; the fact is, ethics charges were filed against Respondent, remain outstanding, and are the only charges that the Commission can adjudicate.

Prior to being elected to the Board in November 2014, Respondent sent correspondence to both Commissioner Hespe and to Lamonte, expressing her disagreement with the rescission, and stating her belief, based on her review of applicable statutes and regulations, that Montague students should be permitted to attend Port Jervis. R-2 and R-4. When Respondent was unsuccessful in effectuating change, she ran for and was elected to the Board, and ultimately nominated to serve as Board President. One month after her membership began, she sent an email to her child's guidance counselor and stated her child was not going to High Point for high school, and would be attending Port Jervis. P-11. She also attended a Port Jervis board meeting and indicated, despite the Commissioner's directives to the contrary, the Board's desire to continue the relationship with Port Jervis. Hearing that "the Montague Board President may have indicated at Port Jervis meetings that Montague students should be able to continue to attend schools in Port Jervis," Lamonte issued a letter, on behalf of the Department, advising that such action would not be in compliance with previous Commissioner decisions, and that parents would need to bear financial responsibility for continuing to send their children to Port Jervis. P-4. Despite this correspondence, and just prior to the start of the 2015-2016 school year, Respondent sent correspondence to multiple Port Jervis administrators and advised, as she had been saying since 2014, that her 8th grade child would be attending Port Jervis. P-8, P-9, and P-10.

As of early August, Montague students were not authorized by the Commissioner to attend school in Port Jervis. Seeing no other option, the Board held a special meeting, and each Board member took "action" to directly undermine the authority of the Commissioner, and to do what he would not - authorize Montague parents to send their children to Port Jervis. R-10. When a letter from Bumpus issued shortly thereafter, and specifically warned that parents who defied the Commissioner's decisions and sent their children to Port Jervis would be responsible for paying the tuition associated with such attendance, each Board member escalated their defiance by voting, at yet another special meeting, in favor of a Resolution which authorized the Board to bear financial responsibility for the unauthorized attendance of Montague students in Port Jervis.

In her Initial Decision, ALJ Cookson acknowledges the dangers of self-help, but fails to fully examine the consequences of self-help. No matter the circumstances, or the policy reason, self-help is ***never*** the appropriate recourse, especially when there is, and was, a legal process by which the Board could have pursued an appeal and/or request for reconsideration. Instead of availing itself of those processes as soon as it learned of the actions of the "anti-Port" Board, the newly reorganized Board, under the direction of its Board President, Respondent, initiated a series of events which would allow the Board, despite the Commissioner's decisions, to "do" whatever it wanted, and whatever the cost.

Although the Commission recognizes that the policy decisions of a Board may change following reorganization, no Board, and no individual Board member, can simply disregard a Commissioner decision. Failure to abide by Commissioner decisions would not only nullify his power and render his determinations meaningless, but it would cause constant chaos and confusion within a district. Instead, all Boards must pursue recourse through the appropriate legal processes and procedures. Moreover, and even if they are unsuccessful in "undoing" what a previous Board did, Boards cannot simply pretend the decision was not made *even if* they believe their policy decision is "better" for students.

In her Initial Decision, ALJ Cookson stated, "[a]s is universal, Board members vote in a manner on agenda items that matter to them, that they ran on during their election, and that they feel passionate about." *Initial Decision* at 16. Although Board members, like Respondent, should vote on matters in the way they feel is most beneficial for the school district, there are circumstances when, as here, a particular issue or cause may "matter" too much to the Board member, and the Board member is so personally and/or financially involved in the matter such that he or she can no longer be objective. Within the first month of her service, and as she advocated even prior to her reelection, Respondent made it clear her child was going to Port Jervis. Her insistence on this position was evident throughout the first year of her term, and was unmistakable even before the Board took formal action to authorize the attendance of Montague students at Port Jervis and before the Board took formal action to authorize the Board's obligation to satisfy tuition obligations to Port Jervis. Because she was too personally and financially involved in these issues, Respondent had an undeniable conflict of interest and should have recused herself from any and all involvement in actions, discussions, and votes relative to this issue. Her failure to recuse in matters where she was not, and could not, be objective because of her clear personal (ensuring her child's attendance at his preferred school) and financial interests (not having a personal financial obligation, i.e., tuition), have led to violations of the Act. Involvement in such matters undermines one of the central tenets of the Act, which is for board members "to 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." *N.J.S.A.* 18A:12-22.

Despite Respondent's multiple violations of the Act, and solely because Respondent no longer serves on the Board, the Commission is limited in the penalty it can recommend. Based on its determination that Respondent violated *N.J.S.A.* 18A:12-24.1(c), *N.J.S.A.* 18A:12-24.1(e), and *N.J.S.A.* 18A:12-24.1(f) as alleged in Count 2 of C14-15, and violated *N.J.S.A.* 18A:12-24(b), *N.J.S.A.* 18A:12-24(c), *N.J.S.A.* 18A:12-24(f), *N.J.S.A.* 18A:12-24.1(a), *N.J.S.A.* 18A:12-24.1(c), and *N.J.S.A.* 18A:12-24.1(f) in C08-16, the Commission recommends a penalty of

censure. It is important to note that, but for the fact that Respondent is no longer a member and President of the Board, the Commission would have recommended removal.

Pursuant to *N.J.S.A.* 18A:12-29(c), this decision shall be forwarded to the Commissioner for review of the Commission's recommended sanctions. Parties may either: 1) file exceptions to the recommended sanction; 2) file an appeal of the Commission's findings of violations of the Act; or 3) file both exceptions to the recommended sanction and an appeal of the Commission's findings of violations of the Act.

Parties taking exception to the recommended sanctions of the Commission but *not disputing* the Commission's findings of violations may file, within **thirteen (13) days** from the date the Commission's decision is forwarded to the Commissioner, written exceptions regarding the recommended sanctions to the Commissioner. The forwarding date shall be the mailing date to the parties, as indicated below. Such exceptions must be forwarded to: Commissioner of Education, c/o Bureau of Controversies and Disputes, P.O. Box 500, Trenton, New Jersey 08625, marked "Attention: Comments on Ethics Commission Sanction." A copy of any comments filed must be sent to the Commission and all other parties.

Parties seeking to appeal the Commission's findings of violations *must* file an appeal pursuant to the standards set forth at *N.J.A.C.* 6A:4, *et seq.* within **thirty (30) days** of the filing date of the decision from which the appeal is taken. The filing date shall be three (3) days after the mailing date to the parties, as indicated below. In such cases, the Commissioner's review of the Commission's recommended sanctions will be deferred and incorporated into the Commissioner's review of the findings of violations on appeal. Where a notice of appeal has been filed on or before the due date for exceptions to the Commission's recommended sanction (thirteen (13) days from the date the decision is mailed by the Commission), exceptions need not be filed by that date, but may be incorporated into the appellant's brief on appeal.

Robert W. Bender, Chairperson
School Ethics Commission

Mailing Date: February 26, 2020

Whereas, at its meeting on August 25, 2015, and after dismissing certain allegations, the Commission voted to transmit the matter docketed by the Commission as C14-15 to the Office of Administrative Law (OAL) for a plenary hearing;

Whereas, at its meeting on September 27, 2016, and after dismissing certain allegations, the Commission voted to find probable cause for the alleged violations of *N.J.S.A.* 18A:12-24(b), *N.J.S.A.* 18A:12-24(c), *N.J.S.A.* 18A:12-24(f), *N.J.S.A.* 18A:12-24.1(a), *N.J.S.A.* 18A:12-24.1(c), and *N.J.S.A.* 18A:12-24.1(f), and to transmit the matter docketed by the Commission as C08-16 to the OAL for a plenary hearing;

Whereas, at the OAL, the matters docketed by the Commission as C14-15 and C08-16 were consolidated; and

Whereas, at the OAL, the Honorable Gail M. Cookson, Administrative Law Judge (ALJ Cookson) conducted plenary hearings on March 7, 2019, June 6, 2019, and June 17, 2019; and

Whereas, on August 2, 2019, ALJ Cookson issued an Initial Decision detailing findings of fact and which concluded that Petitioner failed to prove, by a preponderance of the evidence, that Respondent violated the Act as alleged in this consolidated matter; and

Whereas, on August 19, 2019, Petitioner filed its Exceptions to the Initial Decision; and

Whereas, on December 17, 2019, Respondent filed her Exceptions to the Initial Decision; and

Whereas, on January 2, 2020, Petitioner filed its Reply to Respondent's Exceptions to the Initial Decision; and

Whereas, at its meeting on January 21, 2020, the Commission considered the full record in this matter and discussed modifying ALJ Cookson's "finding" that, when she attended the Port Jervis board meeting, Respondent "merely introduced herself, described the attorney RFP [Request for Proposal] process for replacing [the attorney] who had dual[ly] represented Montague and High Point, and suggested that the boards meet personally instead of communicating through counsel…"; rejecting ALJ Cookson's "finding" that, "[o]n the basis of the preponderance of the credible evidence, [Respondent] never used her position to obtain a personal benefit for herself or her family", and accepting all other findings of fact; adopting the legal conclusion that Respondent did not violate *N.J.S.A.* 18A:12-24.1(e) or *N.J.S.A.* 18A:12-24.1(f) as alleged in Count 1 of C14-15; adopting the legal conclusion that Respondent did not violate *N.J.S.A.* 18A:12-24.1(b) or *N.J.S.A.* 18A:12-24.1(d) as alleged in Count 2 of C14-15; rejecting the legal conclusion that Respondent did not violate *N.J.S.A.* 18A:12-24.1(c), *N.J.S.A.* 18A:12-24.1(e), or *N.J.S.A.* 18A:12-24.1(f) as alleged in Count 2 of C14-15; rejecting the legal conclusion that Respondent did not violate *N.J.S.A.* 18A:12-24(b), *N.J.S.A.* 18A:12-24(c), *N.J.S.A.* 18A:12-24(f), *N.J.S.A.* 18A:12-24.1(a), *N.J.S.A.* 18A:12-24.1(c), or *N.J.S.A.* 18A:12-

24.1(f) in C08-16; and, having found violations of the Act in C08-16, rejecting ALJ Cookson's determination that the consolidated matter should be dismissed and Commission's probable cause order should be reversed; and

Whereas, on January 21, 2020, the Commission also discussed recommending a penalty of censure for Respondent's violations of the Act; and

Whereas, at its meeting on February 25, 2020, the Commission reviewed and voted to approve the within decision as accurately memorializing its actions/findings from its meeting on January 21, 2020; and

Now Therefore Be It Resolved, the Commission hereby adopts the within decision as a Final Decision and directs its staff to notify all parties to this action of its decision herein.

_____
Robert W. Bender, Chairperson

I hereby certify that this Resolution was duly
adopted by the School Ethics Commission
at its meeting on February 25, 2020.

_____
Kathryn A. Whalen, Director
School Ethics Commission