

Before the School Ethics Commission
OAL Docket No.: EEC-01230-20
SEC Docket No.: C56-19 and C57-19 (Consolidated)
Final Decision

In the Matter of Daniel Leonard,
Toms River Regional Board of Education, Ocean County,
Respondent

I. Procedural History

This consolidated matter arises from two (2) separate but related Complaints. More specifically, on August 5, 2019, Sara Sheikh (Complainant Sheikh) filed a Complaint (**C56-19**) alleging that Daniel Leonard (Respondent), a member of the Toms River Regional Board of Education (Board), violated the School Ethics Act (Act), *N.J.S.A.* 18A:12-21 *et seq.*, when he made certain posts to social media, further described below. Complainant Sheikh's Complaint alleged that Respondent violated *N.J.S.A.* 18A:12-24.1(b) and *N.J.S.A.* 18A:12-24.1(f) of the Code of Ethics for School Board Members (Code) in Count 1, and violated *N.J.S.A.* 18A:12-24.1(b) and *N.J.S.A.* 18A:12-24.1(e) of the Code in Count 2. On August 7, 2019, Nina Rossi (Complainant Rossi) also filed a Complaint (**C57-19**) alleging the same.

By correspondence dated October 9, 2019, the parties were notified that, pursuant to its authority as set forth in *N.J.A.C.* 6A:28-6.6, the Commission consolidated the Complaints filed by Complainant Sheikh and Complainant Rossi (collectively referred to as Complainants) against Respondent.

Complainants alleged that on April 12, 2019, Respondent shared a Facebook post from the "Rant Nation with Graham Allen" site to his personal Facebook page. The shared post appears to link to a video purporting to show United States Representative Ilhan Omar. The post additionally contains a picture of Congresswoman Omar wearing a hijab – a head scarf worn by many Muslim women. In sharing the post, Respondent commented, "Terrorist....100%." Complainants further alleged that on April 19, 2019, Respondent shared a Fox News article dated April 19, 2019, entitled, "Rashida Tlaib calls for hunger strikes to shut down ICE" to his personal Facebook page. The post includes a picture of Congresswoman Tlaib, with a comment by Respondent stating, "My life would be complete if she/they die...."

Finally, on April 28, 2019, Complainants alleged that Respondent shared a photograph on his personal Facebook page of a doll, with a black eye, bruise on her chin and dressed in a hijab. The body of the photograph bears the following text: "Sharia Barbie [-] Comes with a jihab [(sic)], bruises and quran [-] Stoning accessories available for additional purchase."¹

¹ The Commission acknowledges that the cited language/speech may be regarded as offensive, provocative, disagreeable, or vulgar; however, the cited language/speech is quoted directly from the parties' submissions. The inclusion of this language/speech is not intended to disparage, offend, or disrespect the reader.

On August 29, 2019, Respondent filed a Motion to Dismiss in Lieu of Answer (Motion to Dismiss) to Complainant Sheikh's Complaint. Additionally, on September 5, 2019, Respondent filed a Motion to Dismiss to Complainant Rossi's Complaint.

At its meeting on November 19, 2019, the Commission considered the filings in this matter and, at its meeting on December 17, 2019, the Commission voted to **grant** the Motion to Dismiss as to the alleged violation of *N.J.S.A. 18A:12-24.1(f)*, but to **deny** the Motion to Dismiss as to all other allegations in the Complaint. Based on its findings, the Commission also voted to direct Respondent to file an Answer to Complaint (Answer) as to the remaining allegations in the Complaint (*N.J.S.A. 18A:12-24.1(b)* in Count 1, *N.J.S.A. 18A:12-24.1(b)* and *N.J.S.A. 18A:12-24.1(e)* in Count 2, and *N.J.S.A. 18A:12-24.1(b)* and *N.J.S.A. 18A:12-24.1(e)* in Count 3), and to transmit the above-captioned matter to the Office of Administrative Law (OAL) following receipt of the Answer.

On January 22, 2020, the matter was transmitted to the OAL and was assigned to the Honorable Elia A. Pelios, Administrative Law Judge (ALJ Pelios). The matter was heard on October 6, 2020, and the record remained open to allow for the submission of written statements. After the hearing concluded, Complainant Sheikh withdrew her Complaint, leaving Complainant Rossi to prosecute the charges. On October 14, 2020, the record was closed.

The Commission acknowledged receipt of ALJ Pelios' Initial Decision on March 18, 2021; therefore, the forty-five (45) day statutory period for the Commission to issue a Final Decision was May 3, 2021. Prior to May 3, 2021, the Commission requested a forty-five (45) day extension of time to issue its decision so as to allow the Commission, which only meets monthly, the opportunity to review the full record. 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 June 17, 2021. The Commission requested and was granted three additional extensions in order to permit Respondent time to order and receive the transcript(s) of the proceedings and file exceptions accordingly. On August 5, 2021, the Commission requested a fifth forty-five (45) day extension of time to issue its Final Decision prior to the November 1, 2021 deadline for issuing a Final Decision. Good cause having been shown, the time limit for issuing a Final Decision was extended until December 16, 2021.

At a meeting on October 19, 2021, the Commission considered ALJ Pelios' Initial Decision, and at its meeting on November 16, 2021, the Commission voted to adopt ALJ Pelios' Initial Decision as its Final Decision.

II. Initial Decision

Based on his review of the documents submitted and witness testimony offered, ALJ Pelios found the following as fact:

- (1) In April 2019, Respondent was at all times a member of the Board.
- (2) On April 12, 2019, Respondent shared a Facebook post from the "Rant Nation with Graham Allen" site to his personal Facebook page, "DP Leonard."

- (3) The shared post appears to link to a video purporting to show U.S. Representative Ilhan Omar “MOCK[ING] Americans for Fearing al-Qaeda.”
- (4) The original post carried the commentary, “This newly discovered video from her past comes AFTER Congresswoman Omar claimed 9/11 was a situation where ‘some people did something.’ SHAME on you.”
- (5) The post contains pictures of Congresswoman Omar wearing a hijab, a head scarf worn by many Muslim women.
- (6) In sharing the post, Respondent commented, “Terrorist.....100%.”
- (7) Respondent understands Representative Omar to be a member of the Muslim faith.
- (8) On April 19, 2019, Respondent shared a Fox News article dated April 19, 2019, titled “Rashida Tlaib calls for hunger strikes to shut down ICE” to his personal Facebook page.
- (9) The post contains a picture of Congresswoman Rashida Tlaib.
- (10) In sharing the post, Respondent commented, “My life would be complete if she/they die”
- (11) Respondent understands Representative Tlaib to be a member of the Muslim faith.
- (12) On April 28, 2019, Respondent shared a photograph to his personal Facebook page, which depicts a doll dressed in a hijab, the doll appears to be a woman, and has a black eye and a bruise on its chin.
- (13) The body of the photograph bears the following text: “Sharia Barbie Comes with jihab [(sic)], bruises and quran. Stoning accessories available for additional purchase.”
- (14) On July 23, 2019, the New Jersey Chapter of CAIR issued a press release calling for the resignation of Respondent due to these posts.
- (15) The matter of Respondent’s posts received media attention.
- (16) The matter was addressed at a Board meeting held on July 24, 2019, with many members of the public in attendance.
- (17) On July 25, 2019, then Board President Joseph Nardini issued a letter (P-4) wherein he described the July 24, 2019, meeting as “contentious.”
- (18) Mr. Nardini denounced Respondent’s posts and asserted that they were distracting the Board from its mission and purpose.
- (19) Mr. Nardini stated in the letter that he had rescinded Respondent’s appointment to the Board’s Safety, Security, and Transportation Committee.
- (20) Mr. Nardini also noted in the letter, that although the Board could not remove Respondent, he asked that Respondent consider resigning his seat on the Board in order to “remove the distraction from the Board’s mission.”
- (21) Mr. Nardini described the posts as an “obstruction to the Board’s message and duties.”
- (22) On July 30, 2019, Board attorneys Stephen R. Leone, Esq., and Melanie Appleby, Esq., issued a letter describing Respondent’s posts as “racist, incendiary and offensive.”
- (23) The letter noted the inability of the Board to remove a member, but described the legal process by which alleged ethics violations could be addressed.
- (24) Respondent did not resign, but he did not run for reelection, and is no longer a Board member.

Initial Decision at 6-9.

ALJ Pelios further examined Respondent's credibility, noting that "[a]lthough Respondent does not bear the burden of proof and although he does not dispute making the Facebook postings at issue, some aspects of his testimony must be assessed for credibility." *Id.* at 9. After describing the standard for credibility, ALJ Pelios found the following regarding Respondent: (1) he "did not see himself as acting on behalf of the Board or in his role as a Board member when he made the posts at issue to be credible"; (2) "his testimony that 'D.P. Leonard,' the Facebook account to which the posts were made, his personal, private Facebook account to also be credible,"; (3) "his testimony that he has a disclaimer on his account's profile page to acknowledge that the views expressed are his own and not those of the Board to be credible"; (4) "his testimony that he did not intend or expect his posts to be publicized beyond those permitted to view the post under his privacy settings to be credible, if not naïve and ultimately incorrect"; (5) "he intended and believed such to be the case when making the posts in question"; (6) "his testimony that he and his family received threatening communications after his posts were publicized" to also be credible. *Id.* at 10.

ALJ Pelios further finds that while Respondent "may sincerely believe he is not anti-Muslim" but rather "anti-certain aspects of Sharia law," "his posts suggest the presence of negative attitudes toward Muslim faith and culture broader than, as he has asserted, his personal understanding or interpretation of Sharia Law." *Id.* at 10-11. ALJ Pelios concludes that "his sharing of the posts in question was informed in significant measure by these attitudes." *Id.*

In the "Conclusions of Law" section of his *Initial Decision*, ALJ Pelios again notes that Complainant Sheikh withdrew her complaint and Complainant Rossi's three-count complaint remains. With respect to the alleged violation of *N.J.S.A.* 18A:12-24.1(b), ALJ Pelios discusses Complainant's burden of proof to establish factually a violation of the Code. After detailing the preponderance of evidence standard that applies, ALJ Pelios outlines that "factual evidence of a violation of *N.J.S.A.* 18A:12-24.1(b) 'shall include evidence that the respondent(s) willfully made a decision contrary to the educational welfare of children, or evidence that the respondent(s) 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.'" *Id.* at 14.

ALJ Pelios further states "Respondent does not dispute making the posts at issue, and the record reflects that he did not believe he was acting in any official capacity when he made the posts." *Id.* Furthermore, "his posts and/or comments do not constitute a decision(s) related to the Board and/or the business of the Board or [District], nor do they constitute action that obstructed the District's programs or policies" in violation of *N.J.S.A.* 18A:12-24.1(b). *Id.* According to ALJ Pelios, "absent the establishment of a nexus between [R]espondent's posts and/or comments on social media and an actual – not theoretical – decision(s) or action(s)," ALJ Pelios is "constrained" to conclude Complainant Rossi "has not met her evidentiary burden in demonstrating violations of *N.J.S.A.* 18A:12-24.1(b)." *Id.* ALJ Pelios concludes that the alleged violations of *N.J.S.A.* 18A:12-24.1(b) should be dismissed as to Counts One, Two, and Three of Complainant Rossi's petition.

The only remaining allegation is *N.J.S.A.* 18A:12-24.1(e) in Count 2 and Count 3. *N.J.S.A.* 18A:12-24.1(e) provides that a board member “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.” ALJ Pelios asserts, “the record is devoid of any evidence or allegation that [R]espondent made any personal promise to anyone in posting the article and comment regarding Rep. Tlaib or the picture of ‘Sharia Barbie.’” *Id.* at 15. Therefore, ALJ Pelios maintains, “What remains is to determine whether in making those posts [R]espondent took private action, that is, action beyond the scope of his duties, such that, by its nature, had the potential to compromise the Board.” *Id.*

ALJ Pelios notes, “testimony by all three witnesses and documents in evidence paint a picture of numerous phone calls to Board staff constituting harassment and threats that no doubt have had a negative impact to the Board’s operation. Furthermore, and more perilous, is the potential for further compromise.” *Id.* at 16. According to ALJ Pelios, the Legislature made “it clear” that “it is essential ... BOARD members ‘must avoid conduct which is in violation of their public trust or which created a justifiable impression ... that such trust is being violated.’” *Id.* ALJ Pelios asserts, “It is appropriate to conclude that conduct creating such an impression has the potential to cause the impairment of the Board or to expose it to discredit or suspicion – in other words, to compromise the Board.” *Id.* at 16-17. ALJ Pelios concludes Respondent’s admitted conduct has that same potential.

According to ALJ Pelios, “It is not a stretch to consider that students or families of students of Muslim faith may fear that their culture or faith may play a role in adverse decisions by the Board” based on Respondent’s “public expression of negative attitudes towards Muslim culture and faith.” *Id.* at 17. Furthermore, “they may well be discouraged from even seeking redress to the Board if they feel there is no point.” *Id.* ALJ Pelios contends, “This is clearly an example of conduct that would cause members of the Board to lose the confidence and respect of the people, and ... ‘creates an unjustifiable impression ... that such trust is being violated.’” *Id.* Therefore, ALJ Pelios concludes Respondent’s posting and commenting as described in Counts 2 and 3 of Complainant Rossi’s petition constitute private action that has the potential to compromise the Board and, therefore, violates *N.J.S.A.* 18A:12-24.1(e). Furthermore, ALJ Pelios notes the Commission “has indicated that in exercising those rights, board members must comply with the [Act].” *Id.* ALJ Pelios asserts the record shows that Respondent “has not complied with, and in fact has violated, the Act and, therefore, ALJ Pelios concludes that charges of violating *N.J.S.A.* 18A:12-24.1(e) should be sustained as to Counts 2 and 3. *Id.* at 18.

Having found violations of the Act, and with regard to the appropriate penalty, ALJ Pelios notes that Respondent’s term on the Board has ended and he did not run again; therefore, removal is not appropriate since he no longer serves on the Board. However, ALJ Pelios found that Respondent should be censured for the violations of *N.J.S.A.* 18A:12-24.1(e) in Counts 2 and 3.

III. Exceptions

Neither Petitioner nor Respondent filed Exceptions to the *Initial Decision*.²

IV. Analysis

Upon a careful, thorough, and independent review of the record, the Commission **adopts** ALJ Pelios' findings of fact, and **adopts** the legal conclusion that Respondent violated *N.J.S.A.* 18A:12-24.1(e), but did not violate *N.J.S.A.* 18A:12-24.1(b).

Pursuant to *N.J.S.A.* 18A:12-24.1(b), Board members shall “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.” The Commission agrees that Respondent did not act in his official capacity when making the posts at issue. Further, the Commission agrees that Complainant did not meet her evidentiary burden pursuant to *N.J.A.C.* 6A:28-6.4 to demonstrate that the posts made by Respondent obstructed the District's programs and policies. Therefore, the Commission agrees to dismiss the alleged violations of *N.J.S.A.* 18A:12-24.1(b).

In finding a violation of *N.J.S.A.* 18A:12-24.1(e), ALJ Pelios appropriately concluded that Respondent's action constituted “private action that may compromise the Board.” In discussing the legislative intent for the School Ethics Act, ALJ Pelios properly highlighted that Board members “must avoid conduct which is in violation of their public trust or which creates a justifiable impression among the public that such trust is being violated.” *N.J.S.A.* 18A:12-22(a). The Commission notes that board members do not surrender the rights that they have as citizens such as freedom of speech when they become members of a school board. However, as discussed in *Dunbar Bey v. Brown*, Camden Board of Education, Camden County, Commission Docket No. C25-11 (*Brown*), and in light of the social media posts by Respondent, the Commission echoes its decision in *Brown*, specifically that “when a sitting Board member makes such a judgmental proclamation, it is likely to be credited far more than a statement offered by an ordinary citizen.” *Brown* at 7. In *Brown*, the Commission found that the respondent, a board of education member, violated the Code when he posted a message on his Facebook page (“Now if we could only do something about our local terrorists that destroy dreams and burn futures”), the Superintendent's photo came up as a result of the post, and he did not remove it. Further, the Commission emphasized “that in using social media, the affirmative duties within the Code of Ethics for School Board Members may not be overlooked.” *Id.* at 8. With the above in mind, Respondent's disparaging posts to social media at issue constituted conduct that undermined the public's trust in the Board and compromised the Board's ability to engage with the public. As ALJ Pelios discussed, Respondent's post had the potential to discourage members of the public, namely members of the Muslim community, to engage with the Board “given what may seem to be an apparent bias.” As such, ALJ Pelios' determination is entirely appropriate.

² The Commission notes that Respondent received all requested transcripts from the proceedings referenced in section I, and subsequently thereafter indicated to the Commission on August 26, 2021 via e-mail that he would not be filing exceptions in the matter.

V. Decision

For all of the aforementioned reasons, the Commission **adopts** findings of fact and the legal conclusion that Respondent did not violate *N.J.S.A.* 18A:12-24.1(b), but violated *N.J.S.A.* 18A:12-24.1(e) in Counts 2 and 3 when he made certain posts to social media.

VI. Penalty

As ALJ Pelios notes, the Commission acknowledges Respondent's term on the Board has ended and he did not run again. Therefore, removal is not possible. However, the Commission agrees with ALJ Pelios and adopts the recommended penalty of censure for the violations of *N.J.S.A.* 18A:12-24.1(e) in Counts 2 and 3.

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

Parties taking exception to the recommended sanction of the Commission but *not disputing* the Commission's finding of a violation may file, **within thirteen (13) days** from the date the Commission's decision is forwarded to the Commissioner, written exceptions regarding the recommended penalty to the Commissioner. The forwarding date shall be the mailing date to the parties, as indicated below. Such exceptions must be forwarded to: Commissioner of Education, c/o Bureau of Controversies and Disputes, P.O. Box 500, Trenton, New Jersey 08625, marked "Attention: Comments on Ethics Commission Sanction," as well as to (ControversiesDisputesFilings@doe.nj.gov). A copy must also be sent to the Commission (school.ethics@doe.nj.gov) and all other parties.

Parties seeking to appeal the Commission's finding of violation *must* file an appeal pursuant to the standards set forth at *N.J.A.C.* 6A:4:1 *et seq.* **within thirty (30) days** of the filing date of the decision from which the appeal is taken. The filing date shall be three (3) days after the date of mailing to the parties, as shown below. In such cases, the Commissioner's review of the Commission's recommended sanction will be deferred and incorporated into the Commissioner's review of the finding of violation on appeal. Where a notice of appeal has been filed on or before the due date for exceptions to the Commission's recommended sanction (thirteen (13) days from the date the decision is mailed by the Commission), exceptions need not be filed by that date, but may be incorporated into the appellant's briefs on appeal.

Robert W. Bender, Chairperson

Mailing Date: November 23, 2021

***Resolution Adopting Decision
in Connection with C56-19 and C57-19 (Consolidated)***

Whereas, at its special meeting on December 17, 2019, the School Ethics Commission (Commission) voted to transmit the above-captioned matter to the Office of Administrative Law (OAL) for a plenary hearing; and

Whereas, following transmittal, the Honorable Elia A. Pelios, Administrative Law Judge (ALJ Pelios) issued an *Initial Decision* dated March 18, 2021; and

Whereas, ALJ Pelios found that Respondent violated *N.J.S.A.* 18A:12-24.1(e), but did not violate *N.J.S.A.* 18A:12-24.1(b) and recommended that Respondent be censured, noting that Respondent no longer serves on the Toms River Board of Education; and

Whereas, at its meeting on October 19, 2021, the Commission reviewed the record in this matter, and discussed adopting ALJ Pelios' findings of fact; adopting the legal conclusion that Respondent violated *N.J.S.A.* 18A:12-24.1(e); and adopting the recommended penalty of censure; and

Whereas, at its meeting on November 16, 2021, the Commission reviewed and voted to approve the within decision as accurately memorializing its actions/findings from its meeting on October 19, 2021; and

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

Robert W. Bender, Chairperson

I hereby certify that this Resolution was duly adopted by the School Ethics Commission at a meeting on November 16, 2021.

Salma T. Chand, Executive Director
School Ethics Commission