

Before the School Ethics Commission
OAL Docket No.: EEC-09014-19
SEC Docket No.: C71-18
Final Decision

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

I. Procedural History

This matter arises from a Complaint that was filed on November 8, 2018, by Eliza Schleifstein (Complainant), alleging that Christopher T. Treston (Respondent), a then member of the Randolph Township Board of Education (Board), violated the School Ethics Act (Act), *N.J.S.A. 18A:12-21 et seq.* More specifically, the Complaint alleges that Respondent violated *N.J.S.A. 18A:12-24(b)*, *N.J.S.A. 18A:12-24.1(e)*, and *N.J.S.A. 18A:12-24.1(g)* in Count 1; *N.J.S.A. 18A:12-24.1(e)* and *N.J.S.A. 18A:12-24.1(g)* in Count 2; and *N.J.S.A. 18A:12-24.1(f)* and *N.J.S.A. 18A:12-24.1(h)* in Count 3. In brief, the Complaint alleges that Respondent's Op-Ed, which was published on October 30, 2018, endorsed four (4) candidates for the then upcoming Board election; the Op-Ed did not endorse Complainant (and, in fact, openly advocated for her non-election); and the Op-Ed adversely affected Complainant's ability to be elected to the Board. *Initial Decision* at 1.

At its meeting on March 26, 2019, and after considering the parties' submissions, the School Ethics Commission (Commission) adopted a decision granting Respondent's Motion to Dismiss in Lieu of Answer (Motion to Dismiss) as to all allegations except for the alleged violations of *N.J.S.A. 18A:12-24(b)* and *N.J.S.A. 18A:12-24.1(e)* in Count 1; *N.J.S.A. 18A:12-24.1(e)* in Count 2; and *N.J.S.A. 18A:12-24.1(f)* in Count 3). On April 15, 2019, Respondent filed an Answer to the remaining allegations, and the above-captioned matter was docketed for the Commission to make a determination regarding probable cause.

Subsequently, and at a special meeting on June 19, 2019, the Commission adopted a decision finding probable cause for the remaining allegations in the Complaint. Based on its finding of probable cause, the Commission transmitted the within matter to the Office of Administrative Law (OAL) for a plenary hearing and, pursuant to *N.J.A.C. 6A:28-10.9(c)* and *N.J.A.C. 6A:28-10.7(b)* through (e), the attorney for the Commission (Petitioner) was charged with prosecuting the allegations in the Complaint for which the Commission found probable cause to credit.

At the OAL, the above-captioned matter was assigned to the Honorable Leslie Z. Celentano, Administrative Law Judge (ALJ Celentano). *Initial Decision* at 1. Prior to the first hearing, which was scheduled for February 13, 2020, Respondent filed a "motion to bar witness testimony," and Petitioner filed a reply brief arguing, among other things, "the substance of the motion was really one for summary decision, not a motion in limine." *Id.* at 2. On February 13, 2020, the scheduled hearing date was converted, with consent from the parties, to oral argument

on the motion, but was later adjourned due to the COVID-19 pandemic. *Id.* at 2-3. On August 26, 2020, the parties agreed to convert Respondent's motion to one for summary decision, and Petitioner was granted twenty (20) days to file a response. *Id.* at 3. Ultimately, and as authorized by the Uniform Administrative Procedure Rules and other precedent, "to assist in the efficient disposition of" this matter, ALJ Celentano converted Petitioner's response to the "motion to bar witness testimony" as "a cross-motion for summary decision," and found the above-captioned matter ripe for summary decision. *Id.* at 3-5. In ALJ Celentano's estimation, "the papers and discovery that have been filed show there is no genuine issue as to the material facts and no facts that need to be found." *Id.* at 8.

On January 27, 2021, ALJ Celentano issued an Initial Decision detailing her findings and legal conclusions, and the Commission acknowledged receipt of same; therefore, the forty-five (45) day statutory period for the Commission to issue a Final Decision was March 15, 2021.¹ Prior to March 15, 2021, 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 April 29, 2021.

On February 19, 2021, and after receiving an extension, Petitioner filed Exceptions to the Initial Decision. On February 26, 2021, Respondent filed Exceptions to the Initial Decision and a response to Petitioner's Exceptions, but the filing was only accepted as a response to Petitioner's Exceptions.

At its meeting on March 23, 2021, the Commission considered the full record in this matter. Thereafter, and at its meeting on April 27, 2021, the Commission voted to adopt ALJ Celentano's findings of fact; adopt the legal conclusion that Respondent's insufficient disclaimer and statements in the Op-Ed violated N.J.S.A. 18A:12-24(b) and N.J.S.A. 18A:24.1(e) of the Code of Ethics for School Board Members (Code); adopt the legal conclusion that Petitioner failed to establish a violation of N.J.S.A. 18A:12-24.1(f) of the Code; and to modify the recommended penalty of reprimand in favor of censure.

II. Initial Decision

After converting Respondent's "motion to bar witness testimony" to a motion for summary decision, and converting Petitioner's response to a cross-motion for summary decision, ALJ Celentano found the following non-exhaustive facts, based on the papers and discovery, to be relevant to ruling on the matter:

1) In the October 30, 2018, Op-Ed, Respondent used a disclaimer that stated, "The author is writing this endorsement on his own personal behalf. His opinions are his own." Complaint, Exhibit 1.

2) In the October 30, 2018, Op-Ed, and regarding Ms. Schleifstein, Respondent stated:

¹ Forty-five (45) days after January 27, 2021, is, technically, Saturday, March 13, 2021.

Ms. Schleifstein's signature theme has been her experience as an expert communicator. That experience was not in evidence earlier this year. First, there was a very bitter – and very well-documented – exchange with [the Randolph Education Association (REA)] president . . . In that single incident, Ms. Schleifstein positioned herself at odds with virtually the entire teaching staff. For a board that is working hard to improve relations with the REA, Ms. Schleifstein's election would be a serious impediment. The April meeting was then followed by an objectively poor interview for an appointment to [a former Board member's] seat. To me, a genuinely skilled communicator would not fall victim to outbursts of emotion, or to poor advance preparation. An elected board member should not, either. Complaint, Exhibit 1.

3) Respondent admitted that he did not seek approval from the Board or its counsel before writing the Op-Ed. *Initial Decision* at 12.

4) Respondent admitted that the endorsement in his Op-Ed was an attempt to influence the voters. *Id.* at 12.

5) Overall, Respondent has “in the record admitted to almost all of the elements of the alleged violations,” except whether his endorsement resulted in an unwarranted privilege or advantage to the endorsed candidates, whether the endorsement had the potential to compromise the Board, and whether he (Respondent) attempted to use the school to acquire some benefit for himself, a member of his immediate family, or a friend.” *Id.* at 12, 17-18.

With the above in mind, ALJ Celentano concluded that Respondent’s “insufficient disclaimer and statements in the [O]p-[E]d were made outside the scope of his duties as a Board member” and “had the potential to compromise the Board” in violation of N.J.S.A. 18A:24.1(e). *Initial Decision* at 12. ALJ Celentano further concluded that because Respondent’s disclaimer “was insufficient to convey that he was expressing his personal opinion, largely due to his multiple references to his position on the Board and Board matters generally,” Petitioner established a violation of N.J.S.A. 18A:12-24(b), “as there was an ‘unwarranted’ advantage to the candidates [R]espondent endorsed by virtue of the appearance that they were receiving a Board endorsement.” *Id.* However, ALJ Celentano concluded that Petitioner failed to establish a violation of N.J.S.A. 18A:12-24.1(f). *Id.*

After concluding that Respondent violated N.J.S.A. 18A:12-24(b) and N.J.S.A. 18A:12-24.1(e) of the Code, ALJ Celentano turned to the issue of penalty. While acknowledging that the Commission has “historically imposed a censure either alone or with a suspension when a board member’s violation is severe enough to warrant public notice of the violation and its penalty,” ALJ Celentano determined that, after reviewing “comments by other ALJs and the Commission when recommending particular penalties as showing the purpose of imposing a penalty of censure versus reprimand,” the penalty of reprimand “is in keeping with the Commission’s past actions.” *Id.* at 14-16. In support of this position, ALJ Celentano juxtaposed Respondent’s conduct with the conduct of other individuals disciplined by the Commission, and also noted that Respondent had resigned his position with the Board. *Id.* at 16.

III. Exceptions

Petitioner's Exceptions

Petitioner filed exceptions on February 19, 2021, with consent from its adversary, arguing that, “the record does not support the ALJ’s recommended penalty of reprimand” for the violations found in Count 1 and Count 2, and also does not support the conclusion that the allegations in Count 3 “were ripe for summary decision.”

As to the recommended penalty of reprimand, Petitioner “[r]espectfully” disagrees, and argues that the “ALJ was mistaken.” Petitioner asserts, “A robust body of case law suggests that a censure is warranted for Respondent’s actions here,” and cites many examples to support this assertion; as such, the Initial Decision should be modified to reflect the appropriate penalty of censure for the violations of N.J.S.A. 18A:12-24(b) and N.J.S.A. 18A:12-24.1(e). According to Petitioner, the evidence “overwhelmingly shows” that Respondent’s conduct did not meet the standards set forth for Board members, he violated the public trust by abusing his official position, and he secured unwarranted privileges for those he endorsed. Petitioner maintains that Respondent also “exceeded the scope of his authority as a Board member by taking private action that had the potential to compromise the Board” when he “wrote and published the [O]p-[E]d that used plural pronouns, such as ‘we[,]’ ‘our[,]’ and ‘us’ on numerous occasions and also discussed Board matters.” Petitioner maintains that the case law cited in the Exceptions supports a penalty of censure for “equivalent or lesser conduct.” Therefore, and to “further guide board members regarding actions involving endorsement of candidates,” Petitioner argues the appropriate penalty is “clearly” censure.

Regarding ALJ Celentano’s legal conclusion that Count 3 “was ripe for summary decision,” Petitioner argues this conclusion “should be rejected as arbitrary, capricious and unreasonable.” Petitioner argues that, based on allegations in the Complaint as well as “the certification of [] [C]omplainant, Petitioner sufficiently identified material facts in dispute with regard to” a violation of N.J.S.A. 18A:12-24.1(f) in Count 3. In this regard, the Commission “previously found in this matter that a violation of N.J.S.A. 18A:12-24.1(f) may be established if evidence is presented that the endorsement in the Op-Ed was an attempt to influence voters and thereby to ‘stack’ the Board with individuals aligned with his own personal agenda, and that such efforts would result in a benefit to him, a member of his immediate family, or a friend.” Petitioner further notes that Respondent “admitted that he attempted to influence voters with the endorsements in the Op-Ed, that he knew his Op-Ed may influence voters, and that he voted ‘no’ to a renewal of the Superintendent’s contract in July 2018.” However, Respondent denies that the “Op-Ed endorsed certain individuals because those candidates expressed a desire to seek non-renewal of the Superintendent’s contract.” According to Petitioner, and contrary to ALJ Celentano’s finding that Respondent denied that he attempted to “stack” the Board, Respondent’s “denial alone does not warrant summary decision,” especially considering that the Complaint and the certification of Complainant “claim otherwise.”

Furthermore, Petitioner argues that Respondent’s “denial” that he attempted to “stack” the Board, “must inherently abide credibility determinations of his testimony and other witnesses, as well as a full review of the documentary evidence at a hearing.” Petitioner notes that despite her attempt to “present additional facts for the factfinder’s consideration through

witness testimony,” namely that Respondent’s Op-Ed was an “attempt to influence voters and stack the board with individuals aligned with his own personal agenda,” the ALJ “failed to acknowledge that there were material facts in dispute … which contradicted [] Respondent’s denials of the allegations.” Petitioner further notes that the Complaint alleged Respondent was displeased with the Superintendent; Respondent was the only Board member to vote against the Superintendent’s contract; Complainant certified as to her relationship with the teacher’s association and the related vote of no confidence, which supports Complainant’s allegation that Respondent was attempting to “stack” the Board; and Complainant notified Respondent that she supported the Superintendent and that Respondent “made inappropriate hand gestures towards Complainant during a candidate question and answer session.” Therefore, Petitioner asserts that “there were genuine issues of material fact, with regard to the allegation in [C]ount 3, as to whether Respondent violated N.J.S.A. 18A:12-24.1(f)” Based on this information, Petitioner asserts that the ALJ’s “determination that there was no issue of material fact to be decided was arbitrary and capricious and not supported by the record.” As such, Count 3 should be “remanded for adjudication on the merits.”

In summary, Petitioner maintains that the ALJ’s Initial Decision should be modified to indicate that a penalty of censure is warranted for the violations of N.J.S.A. 18A:12-24(b) and N.J.S.A. 18A:12-24.1(e), and the allegations in Count 3 “should be remanded for adjudication on the merits,” and should not have been decided by summary decision.

Response to Petitioner’s Exceptions

Although Respondent’s filing on February 26, 2021, was submitted as both Exceptions to the Initial Decision **and** as a response to Petitioner’s Exceptions, the Commission advised the parties that the filing would only be accepted as a response to Petitioner’s Exceptions. The basis for the Commission’s determination is that Respondent’s papers were filed beyond the thirteen-day deadline permitted by N.J.A.C. 1:1-18.4, and Respondent never requested an extension to file his own Exceptions.

As to Petitioner’s recommendation of censure, Respondent argues this penalty is “neither necessary nor appropriate in these circumstances.” Respondent maintains that Petitioner’s reliance on “dated case law concerning conduct of other Board members which was in blatant violation of the Code and the Act” does not apply to this matter, and is misplaced. Furthermore, Petitioner’s citation to *In re Doris Graves, C47-05* (May 27, 2008), “is not even remotely comparable” to Respondent’s behavior. Respondent further maintains that he included “various disclaimers throughout his [O]p-[E]d,” and “did not attribute any opinion or statement in his Op-Ed to any other Board member.” Respondent claims he also used language such as “I have chosen . . . ,” “As fellow citizens . . . ,” and “To me . . . ,” which indicate that he was expressing his own opinion. According to Respondent, although ALJ Celentano found that the disclaimers were “insufficient” and that Respondent’s statements were “outside the scope of his duties as a Board member,” she did not conclude this behavior warranted a censure. Respondent further claims he did not “blatantly ignore the Department’s guidance,” and he is no longer a Board member; therefore, censure is not the appropriate penalty. Moreover, Respondent contends that Petitioner did not provide a “compelling argument” to support a censure.

Regarding a violation of *N.J.S.A. 18A:12-24.1(f)*, Respondent asserts that ALJ Celentano correctly concluded that Petitioner failed to provide sufficient facts that he (Respondent) “attempted to influence the voters to ‘stack’ the Board with those who would help [R]espondent achieve his personal agenda, or that [R]espondent attempted to use the schools to acquire some benefit for himself, his family or a friend.” Moreover, Petitioner’s Exceptions fail “to set forth facts that have been alleged in the Complaint or found by the [Commission] to support a conclusion that Respondent’s preferred candidates would deliver a benefit to him, a member of his immediate family or a friend.” Respondent argues that Petitioner did not provide any evidence, or a witness who could confirm that Respondent “attempted to ‘stack’ the Board,” and Respondent’s “alleged dissatisfaction with the performance of the Superintendent or an allegation of ‘inappropriate hand gestures towards [] [C]omplainant during a question and answer session’” do not support a violation of *N.J.S.A. 18A:12-24.1(f)*. Respondent further argues, “it is undisputed that” Complainant was “against the teacher’s association vote of no confidence in the Superintendent,” and that Respondent “was the only Board member to vote against the Superintendent’s contract renewal.” Therefore, witness testimony was not needed and, even if those assertions were not “certified to in the record, they would have been assumed as true for the purposes of a motion for summary decision.” In addition, Respondent argues that whether he made a “hand gesture” toward Complainant at a Board meeting “is not a fact material to the alleged violation,” and the Complaint does not provide any evidence to support that any of the witnesses testimony would “offer anything relevant beyond confirming … facts already assumed to be true . . . ”

IV. Analysis

Upon a careful and independent review of the facts and evidence set forth in the record, the Commission **adopts** ALJ Celentano’s findings of fact; **adopts** the legal conclusion that Respondent violated *N.J.S.A. 18A:12-24(b)* as well as *N.J.S.A. 18A:12-24.1(e)*; and **adopts** the legal conclusion that Petitioner failed to establish a violation of *N.J.S.A. 18A:12-24.1(f)*.

In finding violations of *N.J.S.A. 18A:12-24(b)* and *N.J.S.A. 18A:12-24.1(e)*, ALJ Celentano, cited various decisions and advisory opinions issued by the Commission, and noted important parameters regarding the conduct of school officials with regard to disclaimers, all of which the Commission finds are worthy of reiteration here. In this regard:

Members of . . . local boards of education are held to the same standards as other municipal officials regarding any conflicts of interest. . . . And, a high standard was intended, as seen in the legislative findings and declarations of the Act, which is concerned with preventing violations of the public trust, or even [a] “justifiable impression among the public that such trust is being violated.” . . .

The purpose of a disclaimer is to prevent board members from compromising the local boards of education by causing reasonable confusion among the public whether the board member’s statement is made as a private citizen or as a public official. . . . Officials should be clear [not to] hold themselves out as a board member when attempting to engage in private actions to “ensure the public would be notified that the board member’s [writing] was written in the board member’s role as a private citizen.” In order to not hold oneself out as a board member, the

official should identify themselves as a board member, but also indicate that they are writing “in their role as a private citizen and that the letter is neither authorized by nor written on behalf of the board.” … This disclaimer will not impact the official’s First Amendment rights, and will also fulfill the Legislature’s intent behind the Act. …

… The most clear on what the [Commission] would consider to be a sufficient endorsement is from Advisory Opinion A36-14 (Oct. 29, 2014).

In this opinion, while the [Commission] stated that it would leave it to the board members’ discretion what language should be used in a disclaimer, the [Commission] repeatedly used a phrase which indicates it may have the specific language necessary to qualify as a sufficient disclaimer. The disclaimer is: “this endorsement is [Board Member’s Name] personal one, and not as a member of the [Township] Board of Education, nor is the endorsement on behalf of the entire Board.” Because this language is used so frequently, and clearly disclaims the board member’s status in relation to the statement—as one made not in their official capacity, and not on behalf of or in relation to the board on which they sit—this phrase therefore appears to be a requirement in order to comply with the [Commission’s] disclosure requirements before a board member endorses a candidate in an election.

Having a disclaimer, even if it appears to be sufficient, may not be enough if the substance of the statements may reasonably lead the public to believe the official is speaking, and representing themselves as a member of the board. …

Initial Decision at 8-11.

Based on the standards set forth above, and after reviewing the Commission’s Probable Cause Notice, ALJ Celentano concluded that because Respondent’s disclaimer was “insufficient to convey that he was expressing his personal opinion, largely due to his multiple references to his position on the Board and Board matters generally,” and “there was an ‘unwarranted’ advantage to the candidates [R]espondent endorsed by virtue of the appearance that they were receiving a Board endorsement,” Petitioner established a violation of N.J.S.A. 18A:12-24(b). *Id.* at 12. In addition, Respondent’s “insufficient disclaimer and statements in the [O]p-[E]d were made outside the scope of his duties as a Board member, and thus violated” N.J.S.A. 18A:12-24.1(e) because “they had the potential to compromise the Board.” *Id.* However, ALJ Celentano concluded that Petitioner failed to establish a violation of N.J.S.A. 18A:12-24.1(f) because the Complaint did not set forth any facts to “support a conclusion that establishes either that [R]espondent attempted to influence the voters to ‘stack’ the Board with those who would help [R]espondent achieve his personal agenda, or that [R]espondent attempted to use the schools to acquire some benefit for himself, his family, or a friend.” *Id.* In light of, among other things, Respondent’s resignation from the Board, the Commission agrees with ALJ Celentano’s legal conclusions and the basis therefor.

The Commission is also compelled to note that there are more current cases, which provide similar direction on the use of disclaimers. For example, in Melnyk v. Fiel, which

resulted in the dismissal of a complaint because the initiating party failed to present sufficient facts which could support a finding that the school official violated the cited provision of the Code, the Commission discussed how failure to include a disclaimer can lead to the belief that the statements made by a school official, even if attempted to be made in their personal/private capacity, can be viewed as those of the Board. Highlands Borough Board of Education, Monmouth County, Commission Docket No. C64-18 (C64-18). More specifically, and although Respondent Fiel argued that the statements attributed to her by Complainant Melnyk “were not made in her capacity as a Board member, and [did] not relate to her Board membership or to Board actions,” the Commission found that “the statements on her Facebook page [were] clearly linked to her Board member (and candidacy),” her social media page did not have a disclaimer noting that the statements made were her own and unrelated to the Board, and that, as a result, “it [was] reasonable for a member of the public … to perceive the statements as being made by Respondent in her capacity as a Board member.” C64-18 at 4. In a footnote, the Commission also addressed the kind of disclaimer that could have avoided the issue altogether, to wit:

A prominent disclaimer (caps/bold), such as, “**THE FOLLOWING STATEMENTS ARE MADE IN MY CAPACITY AS A PRIVATE CITIZEN, AND NOT IN MY CAPACITY AS A BOARD MEMBER. THESE STATEMENTS ARE ALSO NOT REPRESENTATIVE OF THE BOARD OR ITS INDIVIDUAL MEMBERS, AND SOLELY REPRESENT MY OWN PERSONAL OPINIONS**,” may have avoided the appearance – actual or perceived – that the statements were made in Respondent’s capacity as a Board member. *The Commission additionally notes that, even if an appropriate disclaimer is used, the substance of a post/statement can, nevertheless, render the disclaimer meaningless.*

Id. (emphasis added).

In addition, in *Kober v. Langevin*, Complainant Kober asserted that Respondent Langevin violated the Code when she, among other things, promoted the approval of a ballot issue/question on her personal Facebook page. Ho-Ho-Kus Board of Education, Bergen County, Commission Docket No. C07-19 at 2-3 (C07-19). In defense of this allegation, Respondent Langevin countered that she included a disclaimer on her social media page stating, “I am a member of the [Ho-Ho-Kus Board of Education (HHK BOE)], however the views expressed here are my own and not expressed on behalf of the HHK BOE.” *Id.* at 3. Although the Commission ultimately dismissed the matter, and of relevance here, the Commission averred:

Notwithstanding the determination as set forth herein, the Commission feels compelled to note that, as it has stated previously, Board members do not abdicate their state and federal constitutional rights upon being sworn-in. Although Board members, unlike other citizens, are bound by and must adhere to the provisions of the Act, the facts as alleged in the Complaint do not rise to the level of a violation. Without any suggestion that Respondent and/or other members of the Board utilized or expended taxpayer dollars to advocate only one side of the issue, or any suggestion that Respondent – in her capacity as a Board member – endorsed the issue, the Commission is restrained by the provisions of the Act, and its implementing regulations. The facts in the Complaint relate to actions taken by

Respondent in her capacity as a citizen, community member, and taxpayer, and do not implicate her standing as a Board member. In addition, whenever Respondent actually endorsed the issue ..., as opposed to discussing the logistics of posting a sign or dropping off a sign at another community member's request, Respondent did include a disclaimer noting that her opinion was as a private citizen, and did not reflect the position of the Board (or her standing as a Board member).

Id. at 7-8.

As such, and as a supplement to those cited by ALJ Celentano, there is a robust body of decisions and advisory opinions which school officials can utilize to determine when, and how, a disclaimer must be used on social media (and other online/electronic publications) when speaking in their personal/private capacity in order to avoid running afoul of the Act. These decisions and advisory opinions also make clear that the use of a disclaimer does not give a school official carte blanche to *then* discuss Board business and/or matters in a way that is, or appears to be, on behalf of the Board. In this way, it is the substance of the writing, and not the disclaimer itself, that will dictate whether the school official has rendered a disclaimer meaningless.

V. Decision

For the reasons more fully detailed above, the Commission **adopts** ALJ Celentano's findings of fact; **adopts** the legal conclusion that Respondent's insufficient disclaimer and statements in the Op-Ed violated *N.J.S.A. 18A:12-24(b)* and *N.J.S.A. 18A:24.1(e)*; and **adopts** the legal conclusion that Petitioner failed to establish a violation of *N.J.S.A. 18A:12-24.1(f)*.

VI. Penalty

Based upon the conclusion that Respondent violated *N.J.S.A. 18A:12-24(b)* and *N.J.S.A. 18A:12-24.1(e)*, ALJ Celentano recommended a penalty of reprimand. Following its review of the facts and evidence set forth in the record, the Commission modifies the recommended penalty of reprimand in favor of censure. In modifying ALJ Celentano's recommended penalty, the Commission finds three (3) prior decisions to be most instructive, namely *Kwapniewski v. Curioni*, Lodi Board of Education, Bergen County, Commission Docket No. C70-17 (C70-17); *Dunbar Bey v. Brown*, Camden Board of Education, Camden County, Commission Docket No. C25-11 (C25-11); and *Fleres v. Zhong*, West Windsor-Plainsboro Board of Education, Mercer County, Commission Docket No. C17-18 (C17-18).

First, in C70-17, Respondent Curioni, a board of education member, made "multiple" references to Complainant Kwapniewski, a teaching staff member, on his personal blog over a period of two months. C70-17 at 4. In particular, the posts on Respondent Curioni's blog contained inaccurate or misleading information about Complainant Kwapniewski's salary; referenced Complainant Kwapniewski in a negative manner; depicted a picture of the street where she (Complainant Kwapniewski) lives; undermined her credibility with members of the local education association; questioned her qualifications for her teaching position; implied she received her position through patronage; questioned her salary and honesty; and referred to Complainant Kwapniewski as a "greedy bastard" and "union bully." *Id.* Importantly, and

although Respondent Curioni had a “disclaimer” on his blog purporting to indicate that he was writing in his capacity as a private citizen, the ALJ determined that, based on his repeated reference to his status as a Board member, the blog “indisputably represents him as a Board member.” *Id.* at 6. As a result, the ALJ found that Complainant Kwapniewski had proven that Respondent Curioni’s conduct violated *N.J.S.A. 18A:12-24.1(a)*, *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(g)*, and recommended a penalty of suspension for no less than six months. *Id.*

Although the Commission agreed that Complainant Kwapniewski had established violations of *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(g)*, it rejected the determination that Respondent Curioni had violated *N.J.S.A. 18A:12-24.1(a)* and *N.J.S.A. 18A:12-24.1(d)*. *Id.* at 7-8. In terms of penalty, the Commission agreed with the ALJ that Respondent’s deliberate, unnecessary, and repeated attacks on Complainant Kwapniewski, her qualifications, her salary, and her general employment, justified a harsh penalty, and, consequently, recommended a six month suspension. *Id.* at 8-9. The Commission also noted that, but for its rejection of the conclusion that Respondent Curioni violated *N.J.S.A. 18A:12-24.1(a)* and *N.J.S.A. 18A:12-24.1(d)*, the Commission would have recommended a suspension for a much longer duration, and possibly removal. *Id.* at 9.

Upon review, the Commissioner agreed with the Commission’s recommended penalty of suspension for six months, citing “the severity, willfulness, and frequency of respondent’s inappropriate conduct . . .,” and imposed same. [*Kwapniewski v. Curioni, New Jersey Commissioner of Education, Agency Docket No. 334-12/19*](#).

While Respondent here did not engage in a series of posts, but rather only authored one Op-Ed, the substance of the Op-Ed, and the import of his failure to include an appropriate disclaimer on that Op-Ed must be carefully scrutinized. More specifically, while offering public support for four (4) named candidates, Respondent also publicly opposed Ms. Schleifstein’s candidacy. In this Op-Ed which, again, was not appropriately disclaimed as being made in his personal/private capacity and thus was made in his capacity as a Board member and/or on behalf of the Board, Respondent stated:

... Ms. Schleifstein’s signature theme has been her experience as an expert communicator. That experience was not in evidence earlier this year. First, there was a very bitter – and very well-documented – exchange with [the Ridgewood Education Association (REA)] president In that single incident, Ms. Schleifstein positioned herself at odds with virtually the entire teaching staff. For a board that is working hard to improve relations with the REA, Ms. Schleifstein’s election would be a serious impediment. The April meeting was then followed by an objectively poor interview for an appointment to [a former Board member’s] seat. To me, a genuinely skilled communicator would not fall victim to outbursts of emotion, or to poor advance preparation. An elected board member should not, either. Complaint, Exhibit 1.

In short, and in one single post, Respondent – a member and representative of the Board – publicly denounced Ms. Schleifstein’s stated prowess as an effective and “genuinely skilled” communicator; indicated that she had “positioned herself at odds” with the entire teaching staff,

thus broadcasting to the community that Ms. Schleifstein would be unable to establish or foster a meaningful relationship with “the entire teaching staff”; and proclaimed that her election would be a “serious impediment” to a productive relationship between the Board and the REA.

Although it is impossible to determine whether the Op-Ed, in and of itself, was the reason that Ms. Schleifstein was not successful in her bid for election, the power of Board-backed public non-endorsement of a candidate cannot be denied. Moreover, Respondent specifically admitted that he wrote the Op-Ed to “influence the voters” – as a sitting Board member, Respondent was well aware how impactful his words could be to the public. *Initial Decision* at 12.

Second, in C25-11, the Commission found that Respondent Brown, a board of education member, violated *N.J.S.A. 18A:12-24.1(i)* 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. C25-11 at 4, 6-7. In finding a violation, the Commission stated, “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”; therefore, the Commission recommended a penalty of censure. *Id.* at 7. In recommending censure in this matter, which it termed one of “first impression,” the Commission stated, “the Commission takes this opportunity to impress upon this Respondent, as well as other Board members, that in using social media, the affirmative duties within the Code of Ethics for School Board Members may not be overlooked.” *Id.* at 8. Consequently, the Commission found that censure was “an appropriate sanction to convey this message.” *Id.*

Upon review, the Commissioner found that, due to the absence of prior violations by Respondent Brown, reprimand was the more appropriate penalty. [Dunbar Bey v. Brown, New Jersey Commissioner of Education, Agency Docket No. 365-12/11.](#)

Finally, in C17-18, Respondent Zhong, also a board of education member, received a message from a parent within the school district about an incident, which resulted in the discipline of a high school student. C17-18 at 2. Respondent Zhong forwarded the message via WeChat to a group of people solely consisting of members of his immediate family. *Id.* Thereafter, one of Respondent Zhong’s immediate family members forwarded the message to “countless” others, and it eventually made its way to the student who was the subject of the initiating message. *Id.* Following her review, the ALJ determined that Respondent Zhong had violated the confidentiality provision of *N.J.S.A. 18A:12-24.1(g)*, and recommended a penalty of reprimand. *Id.* at 1. The basis for the ALJ’s recommended penalty was that Respondent acknowledged that he made a mistake, and indicated that he did not intend to disclose the information to anyone outside of his immediate family. *Id.* at 4.

While the Commission agreed that Respondent Zhong’s conduct violated the confidentiality provision of *N.J.S.A. 18A:12-24.1(g)*, it rejected the recommended penalty of reprimand in favor of censure. *Id.* In finding that a more severe penalty was appropriate, the Commission stated, “Respondent seems to overlook the fact that confidential information, which is shared with him because he is a Board member, should not be shared with anyone, including members of his own family until, at the very least, the information is no longer confidential.” *Id.* As such, and “*in order to impress upon Respondent the fundamental importance of safeguarding confidential information,*” the Commission recommended a penalty of censure. *Id.*

Of note, and following review, the Commissioner concurred with the penalty of censure for Respondent Zhong. [Fleres v. Zhong, New Jersey Commissioner of Education, Agency Docket No. 105-5/19](#) (emphasis added).

Taken together, C25-11 and C17-18 recognize that, in certain circumstances, which the Commission finds applicable here, a penalty greater than reprimand is warranted even when a school official has not previously been found in violation of the Act and/or has not otherwise been sanctioned for same. Although, in C25-11, the Commissioner downgraded the Commission's recommended penalty of censure in favor of reprimand because there was an absence of prior infractions, the conduct at issue in that case (C25-11) was far less egregious, deliberate, and purposeful than Respondent's actions here. In addition, in C25-11, the Commission appropriately recognized the potential pitfalls associated with the use of social media by school officials and attempted, at that time, to send a cautionary warning to the field. Now, more than a decade later, when use of social media and online publications has become commonplace, prolific, pervasive, and often times divisive, and given that there has been a significant influx in the number of complaints filed with the Commission regarding use (or non-use) of disclaimers in electronic publications (not just on social media), it is now more critical than ever to underscore and emphasize that when Board members want to speak as private citizens, they must include an appropriate disclaimer that makes the capacity in which they are speaking clear and unambiguous. In addition, even if an appropriate disclaimer is used, a school official must never negate the import of the disclaimer by proceeding, under the purported protection of a disclaimer, to discuss or comment on Board business or matters in a way that leads a member of the public to believe that the individual is speaking on behalf of, and as a representative of, the Board. Finally, it is of no moment to the Commission that Respondent resigned his seat from the Board, and this fact should not mitigate or otherwise reduce a penalty to any degree. To the extent resignation affords a school official the ability to avoid the imposition of a harsher penalty, the force and effect of the Act becomes diminished.

For all of the aforementioned reasons, the Commission recommends that Respondent be **censured** for having violated N.J.S.A. 18A:12-24(b) and N.J.S.A. 18A:12-24.1(e).

Pursuant to N.J.S.A. 18A:12-29(c), this decision shall be forwarded to the Commissioner of Education (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: April 27, 2021

***Resolution Adopting Decision in
Connection with C71-18***

Whereas, at a special meeting on June 19, 2019, and in accordance with N.J.A.C. 6A:28-10.9(c) and N.J.A.C. 6A:28-10.7(b) through (e), the School Ethics Commission (Commission) voted to transmit the remaining allegations in the matter docketed as C71-18 to the Office of Administrative Law (OAL) for a plenary hearing; and

Whereas, at the OAL, the attorney for the Commission (Petitioner) was responsible for prosecuting the remaining allegations; and

Whereas, at the OAL, and after converting certain of the parties' filings, the Honorable Leslie Z. Celentano, Administrative Law Judge (ALJ Celentano) determined the matter was ripe for summary decision, and issued an Initial Decision dated January 27, 2021; and

Whereas, in her Initial Decision, ALJ Celentano found that Respondent violated N.J.S.A. 18A:12-24(b) and N.J.S.A. 18A:12-24.1(e); Respondent did not violate N.J.S.A. 18A:12-24.1(f); and recommended a penalty of reprimand; and

Whereas, on February 19, 2021, Petitioner filed Exceptions to ALJ Celentano's Initial Decision, and Respondent filed a reply to Petitioner's Exceptions on February 26, 2021;

Whereas, at its meeting on March 23, 2021, the Commission reviewed and discussed the full record in the above-captioned matter; and

Whereas, at its meeting on March 23, 2021, the Commission discussed adopting the findings of facts; adopting the legal conclusions; and modifying the recommended penalty of reprimand in favor of a censure; and

Whereas, at its meeting on April 27, 2021, the Commission reviewed and voted to approve the within decision as accurately memorializing its actions/findings from its meeting on March 23, 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 its meeting on April 27, 2021.

Kathryn A. Whalen, Director
School Ethics Commission