



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW
9 Quakerbridge Plaza
P.O. Box 049
Trenton, New Jersey 08625-0049
(609) 438-6316

Barry E. Moscowitz
Acting Director and Chief
Administrative Law Judge

Candice Hendricks
Assistant Director

October 9, 2024

By E-mail: opra+request-67745-42b98b2c@requests.opramachine.com

Anonymous

Re: OPRA Request

Dear Requestor:

The Office of Administrative Law ("OAL") received your request under the Open Public Records Act on October 9, 2024. You requested:

"1) All legal motions filed In the Matter of Adi Nikitinsky in case with OAL Dkt. No. EEC 07955-2021 S during the period June 1, 2024-October 8, 2024.

2) Any Court Order or rulings related to the Matter of Adi Nikitinsky in case with OAL Dkt. No. EEC 07955-2021 S that occurred during the period June 1, 2024-October 8, 2024.."

Please see attached responsive records.

Sincerely,

/s/Candice G. Hendricks
OPRA Custodian/Assistant Director
Judicial Standards and Procedures

State of New Jersey
Office of Administrative Law
GOVERNMENT RECORDS REQUEST FORM

Important Notice

Page two of this form contains important information related to your rights concerning government records. Please read it carefully.

Requestor Information – Please Print

First Name Anonymous MI _____ Last Name _____
Company _____
Mailing Address _____
City _____ State NJ Zip _____ Email <opra+request-67745-42b98b2c@requests.opramachine.com>
Business Hours Telephone: Area Code _____ Number _____
Preferred Delivery: Pick Up _____ US Mail _____ On Site Inspect _____ Email X
Circle One: Under penalty of *N.J.S.A. 2C:28-3*, I certify that I **HAVE / HAVE NOT** been convicted of any indictable offense under the laws of New Jersey, any other state, or the United States.
Signature Anonymous Date 10/9/2024

Payment Information

Maximum Authorization Cost \$ _____
Select Payment Method
Cash _____ Check _____ Money Order _____
Fees: \$.01/page (500 pages or over)
Delivery: Delivery/postage fees additional depending upon delivery type.
Extras: Extraordinary service fees dependent upon request.

Record Request Information: To expedite the request, be as specific as possible in describing the records being requested. Also, please include the type of access requested (copying or inspection), and if data, the medium requested.

Records requested:

- 1) All legal motions filed in the Matter of Adi Nikitinsky in case with OAL Dkt. No. EEC 07955-2021 S during the period June 1, 2024-October 8, 2024.
- 2) Any Court Order or rulings related to the Matter of Adi Nikitinsky in case with OAL Dkt. No. EEC 07955-2021 S that occurred during the period June 1, 2024-October 8, 2024.

AGENCY USE ONLY

Est. Document Cost _____
Est. Delivery Cost _____
Est. Extras Cost _____
Total Est. Cost _____
Deposit Amount _____
Estimated Balance _____

Deposit Date _____

AGENCY USE ONLY

Disposition Notes
Custodian: If any part of request cannot be delivered in seven business days, detail reasons here.

In Progress - Open _____
Denied - Closed _____
Filled - Closed _____
Partial - Closed _____

AGENCY USE ONLY

Tracking Information

Tracking # _____
Rec'd Date 10/9/2024
Ready Date 10/9/2024
Total Pages _____

Final Cost

Total _____
Deposit _____
Balance Due _____
Balance Paid _____

/s/Candice G. Hendricks
Custodian Signature

10/9/2024
Date

Requesting Access to Government Records Under the New Jersey Open Public Records Act (N.J.S.A. 47:1A-1 et seq.)

1. This form should only be used to submit records requests to the Office of Administrative Law.
2. In order to request access to government records under OPRA, you must complete and date this request form and deliver it in person during regular business hours or by mail, fax or electronically to the records custodian of the Office of Administrative Law. Your request is not considered filed until the custodian has received a completed request form. If you submit the request form to any other officer or employee of the Office of Administrative Law, that officer or employee may not have the authority to accept your request form on behalf of the Office of Administrative Law and your request will be directed to the records custodian. The seven-business-day response time will not commence until the custodian reviews the request to determine if it is complete.
3. If you submit a request for access to government records to someone other than the records custodian, do not complete the Office of Administrative Law request form, or attempt to make a request for access by telephone; the Open Public Records Act and its deadlines, restrictions and remedies will not apply to your request.
4. The fees for duplication of a government record in printed form are listed on the front of this form. We will notify you of any special charges, special service charges or other additional charges authorized by State law or regulation before processing your request. Payment shall be made by check or money order payable to the State of New Jersey.
5. If it is necessary for the records custodian to contact you concerning your request, providing identifying information, such as your name, address and telephone number or an e-mail address is required. Where contact is not necessary, anonymous requests are permitted, except that anonymous requests for personal information are not honored.
6. **You may be charged a 50% or other deposit when a request for copies exceeds \$25.** The custodian will contact you and advise you of any deposit requirements. Anonymous requests, when permitted, require a deposit of 100% of estimated fees. You agree to pay the balance due upon delivery of the records.
7. Under OPRA, a custodian must deny access to a person who has been convicted of an indictable offense in New Jersey, any other state, or the United States, and who is seeking government records containing personal information pertaining to the person's victim or the victim's family.
8. By law, the Office of Administrative Law must notify you that it grants or denies a request for access to government records within seven business days after the records custodian receives the request, provided that the record is currently available and not in storage. If the record requested is not currently available or is in storage, the custodian will advise you within seven business days when the record can be made available and the estimated cost. You may agree with the custodian to extend the time for making records available, or granting or denying your request.
9. You may be denied access to a government record if your request would substantially disrupt agency operations and the custodian is unable to reach a reasonable solution with you.
10. If the Office of Administrative Law is unable to comply with your request for access to a government record, the custodian will indicate the reasons for denial on the request form and send you a signed and dated copy.
11. Except as otherwise provided by law or by agreement with the requester, if the records custodian fails to respond to you within seven business days of receiving a request form, the failure to respond will be considered a denial of your request.
12. If your request for access to a government record has been denied or unfilled within the time permitted by law, you have a right to challenge the decision by the Office of Administrative Law to deny access. At your option, you may either institute a proceeding in the Superior Court of New Jersey or file a complaint in writing with the Government Records Council (GRC). You may contact the GRC by toll-free telephone at 866-850-0511; by mail at PO Box 819, Trenton, NJ 08625; by e-mail at grc@dca.state.nj.us; or at their web site at www.state.nj.us/grc. The Council can also answer other questions about the law.
13. Information provided on this form may be subject to disclosure under the Open Public Records Act.



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. EEC 07955-21

AGENCY DKT. NO. C03-21

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

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

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

Record Closed: February 2, 2024

Decided: March 12, 2024

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

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

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

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

FACTUAL DISCUSSION

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

Testimony

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

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

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

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

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

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

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

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

Findings of Fact

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

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

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

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

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

LEGAL ANALYSIS AND CONCLUSION

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

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

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

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

I will recognize that authority rests with the board of education and will make no personal promises nor take any private action that may compromise the board.

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

I will refuse to surrender my independent judgment to special interest or partisan political groups or to use the schools for personal gain or for the gain of friends.

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

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

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

ORDER

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

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

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

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

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

March 12, 2024

DATE


SARAH G. CROWLEY, ALJ

Date Received at Agency:

Date Mailed to Parties:

SGC/lam/kl

APPENDIX

WITNESSES

For petitioner

Sarah Aziz

For respondent

Adi Nikitinsky

Catherine Crowley

Barbara Lonczak

EXHIBITS

For petitioner

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

For respondent

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

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

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

I. Procedural History

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

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

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

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

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

¹ On February 10, 2021, Complainant filed a deficient Complaint; however, on February 11, 2021, Complainant cured all defects and filed an Amended Complaint that was deemed compliant with the requirements detailed in *N.J.A.C.* 6A:28-6.3.

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

II. Initial Decision

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

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

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

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

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

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

III. Exceptions

Petitioner’s Exceptions

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

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

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

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

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

Respondent’s Reply to Petitioner’s Exceptions

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

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

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

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

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

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

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

IV. Analysis

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

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

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

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

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

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

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

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

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

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

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

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

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

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

V. Decision

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

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

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

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

Robert W. Bender, Chairperson

Mailing Date: June 17, 2024

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

Whereas, at its meeting on July 27, 2021, the School Ethics Commission (Commission) voted to transmit the above-captioned matter to the Office of Administrative Law (OAL) for a hearing; and

Whereas, the Administrative Law Judge (ALJ) issued an Initial Decision dated March 12, 2024; and

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

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

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

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

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

Robert W. Bender, Chairperson

I hereby certify that this Resolution was duly adopted by the School Ethics Commission at its special meeting on June 17, 2024.

Brigid C. Martens, Director
School Ethics Commission