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February 2, 2024

Via Email (Kelly.Lee@oal.nj.gov)
Honorable Sarah G. Crowley, A.L.J.
State of New Jersey
Office of Administrative Law
3444 Quakerbridge Road
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Mercerville, New Jersey 08619

Re: IMO Adi Nikitinsky, Monroe Township Board of Education, Middlesex County,
Agency Docket No.: C03-21
OAL Docket No.: EEC 07955-2021 S

Dear Judge Crowley:

In connection with the above-referenced matter, please accept this letter brief on behalf of Petitioner, the New Jersey Department of Education, School Ethics Commission ("Commission"), as its written summation following the administrative hearing conducted on October 11, October 13, and October 16, 2023.

PROCEDURAL HISTORY

On February 11, 2021, Sarah Aziz ("Complainant") filed an amended complaint with the Commission alleging Adi Nikitinsky ("Respondent") violated the School Ethics Act ("Act"), N.J.S.A. 18A:12-21 to -34, as well as the Code of Ethics for School Board

Members ("Code"), N.J.S.A. 18A:12-24.1. Count One alleged Respondent violated N.J.S.A. 18A:12-24.1(f) by using the schools for personal gain. Specifically, Count One alleged Respondent, a member of the Board of Education ("Board") and president of the Monroe Township Middle School Parent Staff Association ("PSA"), directed district employees to promote the PSA's sales, while also being its chief vendor. Count One also alleged Respondent influenced District staff to have another parent organization – the Monroe Township Middle School Parent Teacher Organization ("PTO") – use his company as a vendor. Count Two alleged Respondent violated N.J.S.A. 18A:12-24(a), (b) and (c) by requesting that the principal, Chari Chanley, and her staff send out emails advertising PSA sales while the Respondent voted on the principal's contract, creating a conflict of interest because the Respondent has a business arrangement with the district as the chief vendor of the PSA while also acting as one of its officers. Count Three alleged Respondent violated N.J.S.A. 18A:12-24.1(e) and jeopardized the tax-exempt status of the PSA by simultaneously acting as its officer and chief vendor, and Count Four alleged Respondent violated N.J.S.A. 18A:12-24.1(e) by selling political lawn signs to support a Board campaign at a substantial discount, violating campaign finance laws.

On March 24, 2021, Respondent filed a motion to dismiss in lieu of an answer. Complainant opposed Respondent's motion on April 19, 2021. At its meeting on May 25, 2021, the Commission adopted a decision granting in part and denying in part the motion to dismiss. The Commission dismissed Counts Three and Four and denied respondent's motion with respect to Counts One and Two. Ibid.

On June 1, 2021, Respondent filed an answer to the remaining allegations in the complaint. In his answer, Respondent admitted his company Dot Designing made spiritwear available for sale through the PSA, but denied he or his company profited from the sale or was reimbursed for the cost of goods, claiming his contributions were a donation. He claimed that all orders and payments for merchandise went through the PSA. Respondent admitted that he made more than one request to staff at the district, including to Principal Chanley, to send an email to staff and families of the district advertising the PSA sale. However, he denied acting in his official capacity as Board member when he communicated with district staff and the principal regarding advertising the PSA sales of merchandise received from his company.

The Commission issued a probable cause notice on July 27, 2021, finding probable cause to credit the alleged violations of N.J.S.A. 18A:12-24.1(f) in Count One and the violation of N.J.S.A.

18A:12-24(a), (b), and (c) in Count Two. With respect to Count One, the Commission found a violation could be substantiated if there was evidence that Respondent "leveraged his position as a Board member for an advantage or benefit, whether financial or otherwise, and regardless of whether the advantage or benefit was for himself, his spouse, and/or his (or his spouse's) business."

Regarding Count Two, the Commission found a violation of N.J.S.A. 18A:12-24(a) may be found if the evidence proves Respondent and/or his spouse "has an interest in a business organization or engaged in a business, transaction, or professional activity that solicited or targeted district staff, personnel, or students and/or their families." With respect to N.J.S.A. 18A:12-24(b), the Commission found "if the evidence shows that Respondent used his official position as a Board member or as a Board officer (as opposed to his position as a member or officer of the MTMS PSA) to secure an 'unwarranted' privilege, advantage, or employment for himself, his spouse, or an 'other,' a violation may be substantiated." The Commission further found that a violation of N.J.S.A. 18A:12-24(c) could be substantiated "if the evidence demonstrates that Respondent did act in his official capacity, and his actions relative to the employment of the MTMS Principal constituted involvement in a matter where he or his spouse had a direct or indirect financial involvement, or constituted involvement in a matter where he had a personal involvement that created some benefit to him, his spouse, or an 'other'." The matter was transferred to the Office of Administrative Law ("OAL") on July 27, 2021, for a fact-finding hearing on the allegations in the probable cause notice.

On June 15, 2022, Respondent moved for summary decision. Complainant filed opposition to the motion on July 25, 2022. On October 24, 2022, the ALJ denied summary decision. The hearing took place on October 11, October 13, and October 16, 2023.

STATEMENT OF FACTS

Respondent served as a member of the Monroe Township Board of Education during the 2020 and 2021 calendar years. Exhibit P-10. During those same years, Respondent was a member of the Monroe Township PSA, and also served as its president for the 2020-2021 school year. Ibid.

Respondent is also the owner of a printing company, Dot Designing, located at 242 Possum Hollow Road, Building 3 in Monroe Township, New Jersey. Ibid. Dot Designing is a high-profile business in Monroe, and Respondent, through this private enterprise, has had many lucrative contracts with the town and with other residents. 3T39:19-24. During the 2020-2021 school year, the PSA sold spiritwear to students and parents to fundraise for the middle school. Exhibit P-10. Respondent's business donated various personalized goods to the PSA for sale on its online store. Exhibit P-10. This online store, through which the PSA sold all its fundraising items, was devised and designed by Respondent. Exhibit P-10; 3T52:8-9; 3T87:11-14. The store was also managed by Orange Media Group, a company owned and operated by Respondent's wife. 3T87:15 to 88:1.

To facilitate these sales, Respondent sent several emails to district staff at the middle school requesting them to send emails to the families of the school's students advertising the online sale. Exhibit P-10. Emails advertising the sale of spiritwear were sent, at minimum, on November 18, November 20, November 25, and December 1. Exhibit R-12. Respondent also sent a request to the secretary of then-Principal Chari Chanley, Barbara Lonczak, asking Chanley to send out more advertisements. Ibid. These communications came from Respondent's purported personal email, [redacted], which Respondent claims he used for personal communications for many years. 3T43:13 to 44:8.

During Respondent's tenure as president, the district's policies with respect to email notifications from parent organizations were changing. Chanley testified that over the course of her time as principal, the secretaries moved to standardize the sending of these emails. 2T23:22 to 24:13. Liz Preuster, a former PSA president, and Barbara Lonczak, Chanley's secretary, also testified the protocol with respect to notifications was in the process of becoming more regular. 2T91:14-21; 3T13:17-23. Chanley also testified that new parents heading the parent organizations in the district would need to be informed of the standards for sending notification emails. 3T24:6-12. Respondent was allegedly never informed of these policies or how often emails should be sent. 3T48:24 to 49:2. However, during the previous year, the presidents of both the PTO and PSA, Maria Fasaponte and Liz Preuster, were informed by email that notifications would only be sent once a week. Exhibit P-3.

Upon purchasing spiritwear from the PSA’s online store, customers, rather than being directed to the middle school, would be instructed to pick up their purchase from 242 Possum Hollow Road, Building 3 in Monroe Township, New Jersey—the address of both Dot Designing and Orange Media Group. 3T51:8-17. Respondent stated this protocol was in place due to the COVID-19 pandemic, which made it impossible for students and parents to pick up their order at the middle school. 3T57:12-14. When a customer would arrive to pick up their spiritwear, Respondent’s company name was visible on the outside of the building. 3T120:2-7.

During these dealings, Respondent also acted in his official capacity as a Board member to vote on Chanley’s contract. 2T55:21 to 56:9. Chanley’s salary was predetermined insofar as it was based on a negotiated salary guide. Ibid. Nonetheless, Respondent as a Board member voted on all personnel matters, and in fact voted on the salaries of such personnel. Ibid.

In addition to spiritwear, in or about April 2020, Respondent gave out lawn signs created by his company Dot Designing to graduating seniors to commemorate their graduation. 3T62:2 to 21. On or about April 5, 2020, Steve Reiback, the Board president, called Respondent to inform him he had received complaints from others regarding these donated signs. 3T61:2 to 62:6. The chief vendor of a student organization, the Future Business Leaders of America, complained to Reiback because the vendor was also selling signs to the schools. Ibid. Respondent memorialized this in an email on April 5, 2020, indicating that while he was told his actions were affecting the FBLA fundraiser, these were actions taken in his capacity as a private citizen, and he was otherwise "appalled that this was even brought up." Exhibit P-14.

ARGUMENT

POINT I

THE BOARD HAS PROVEN BY A PREPONDERANCE OF COMPETENT CREDIBLE EVIDENCE THAT RESPONDENT VIOLATED THE SCHOOL ETHICS ACT.

By using his company to provide goods to the PSA while simultaneously serving as a member of the Board, Respondent's conduct created an appearance of impropriety warranting a penalty of censure. The New Jersey Legislature enacted the School Ethics Act, N.J.S.A. 18A:12-21 to -34, to ensure the "conduct of members of local boards of education . . . hold the respect and confidence of the people." N.J.S.A. 18A:12-22(a). To that end, the Act requires board members and officials to "avoid conduct which is in violation of their public trust or which creates a justifiable impression among the public that such trust is being violated." Ibid. "Each Board member undergoes ethics training and each is responsible for [their] own ethical conduct. That responsibility cannot be delegated or avoided." Cheng v. Rodas, Comm'r Decision 22-17 (January 20, 2017). Board members have a "duty as . . . elected official[s] to act prudently and cautiously, as is properly to be expected by a reasonable person under the circumstances so as not to compromise the Board." Ibid.

To that end, the Legislature established specific standards applicable to the conduct of board members and other officials as a "disciplinary mechanism to ensure the uniform maintenance of those standards among them." Ibid. Among these specific standards are N.J.S.A. 18A:12-24(a), (b), and (c), which state, respectively:

> (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 . . . .

With respect to these statutes, a court need not find that a public official acted to actually further their personal interests; the decisive factor is whether there is even the potential for conflict. See In re Rhonda Williams Bembry, Hackensack Board of Educ., Bergen Cnty., C49-12 (Aug. 25, 2014); In re Maria Carvalho, Stanley Neron and Daniel Nina, Elizabeth Board of Educ., Union Cnty., C10-16 (March 20, 2017). Relatedly, "in municipal matters, it is the public policy of this State that public officials avoid even the appearance of impropriety." In re Maria Carvalho, Stanley Neron and Daniel Nina, Elizabeth Board of Educ., Union Cnty., C10-16 (March 20, 2017) (citing Friends Retirement Concepts v. Bd. of Educ. of the Borough of Somerville, 356 N.J. Super. 203, 214 (Law Div. 2002)). The standard is measured from the perspective of the public; if a "reasonable member of the public would conclude that an act was a violation of the public trust, or that the individual's personal involvement would be likely to impair their objectivity or independence of judgment, then the Act has been violated." In re Terry Tucker, East Orange Board of Educ., Essex Cnty., C36-10 (October 23, 2023). A reasonable member of the public, moreover, must be a "fully informed member of the public." Ibid.

With respect to N.J.S.A. 18A:12-24(a), Respondent clearly had an interest in a business organization which, through the PSA, targeted district staff, personnel, students and their families, and which otherwise was in substantial conflict with the proper discharge of his public duties. By his own admission, Respondent owned and operated Dot Designing, a graphic design and printing company, which furnished goods to the PSA. In turn, Respondent, from his email [redacted], requested that the district, and in particular then-Principal Chari Chanley, send notifications to parents regarding the PSA's fundraiser, which would entail the sale of his company's donated goods. Emails were sent in quick succession on November 18, November 20, November 25, and December 1. In addition, a company owned and operated by

Respondent's wife, Orange Media Company, managed the very website on which goods were sold.

It is immaterial that Respondent may have donated the goods in question to the PSA or had beneficent motivations. Respondent clearly created the potential for conflict, and an appearance of impropriety, by simultaneously operating as the head of the PSA, the owner of its chief vendor, and a member of the Board. A reasonable, informed member of the public could easily conclude Respondent's position as a Board member was compromised when his business, well-connected in Monroe, furnished goods to the PSA, of which he was president. While president of the PSA, Respondent communicated with district staff to organize fundraisers and advertisements for district students and parents from an email associated with his business. Had respondent not operated the PSA's chief vendor, a reasonable member of the public could only conclude his say-so as PSA president carried more weight because he was also a Board member. Because he used his own company as the PSA's chief vendor, however, a reasonable member of the public could easily conclude that weight was being leveraged to serve his own interests, thus compromising the integrity of his position on the Board. This is especially true where, contrary to the policy as explained to previous parent organization leaders, the PSA, under Respondent's leadership, sent multiple emails over the course of several days.

This appearance of impropriety is made worse by the fact that Respondent—rather than deal with district staff from a neutral email or one associated with the PSA, or attach a rider to any emails confirming his actions were taken in his capacity as a parent leader and in no way associated with the Board—communicated with district staff from [redacted]. The appearance of impropriety, and the potential for conflict, is clear: Respondent appeared to deal with the district as the owner of a well-connected, high-profile business, with a personal interest in the sale of his own business's goods, rather than as PSA president. This further increases the potential for conflict and bolsters the appearance of impropriety. A reasonable member of the public could easily conclude Respondent's Board position, and all recognition and power it affords, was compromised when he requested the district take action to advertise the sale of goods which his own company furnished.

With respect to N.J.S.A. 18A:12-24(b), and relatedly N.J.S.A. 18A:12-24.1(f), Respondent's actions benefited his business by garnering goodwill for his company through the publicization of its name. As admitted by Respondent, due to the COVID-19 pandemic, parents and students wishing to purchase and pick up spiritwear sold by the PSA had to do so in-person by visiting his place of business. While the COVID-19 pandemic certainly required schools and related organizations to adopt different procedures to keep students and parents safe, Respondent once again bolstered the appearance of impropriety by having the pick-up place for spiritwear at his own place of business rather than anywhere else. Individuals arriving to pick up spiritwear in the midst of the pandemic would see the name of his company on the building, exposing his private business to any residents of Monroe purchasing PSA goods.

In addition to any goodwill Respondent's business received from his endeavors, Respondent's business also provided students lawn signs free of charge. One of Respondent's competitors, a vendor for the FBLA, complained, as they were also selling lawn signs. One could easily see a conflict of interest insofar as Respondent's business might reduce the sales and profitability of his competitor's sign sales by making signs available free of charge through the PSA. Whether or not Respondent intended such an outcome is, again, immaterial. The perceptions of an informed member of the public are central, and an informed resident of Monroe could conclude Respondent's actions were taken not for philanthropic reasons, but to weaken the competition of like businesses in the area.

Even if Respondent did not intend to or did not actually garner goodwill through these efforts, the appearance of impropriety remains the same. Any parent arriving at Respondent's place of business could reasonably conclude that his business profited from its association with the PSA and, in turn, his actions as PSA president. An informed member of the public could reasonably question whether a Board member, furnishing goods from a company he personally owns to a parent organization he personally oversees, would leverage his position for personal gain.

Notwithstanding the above, the Commission recently published guidance advising that a Board member is not per se prohibited from simultaneously serving as both Board member and a president of a parent organization. School Ethics Commission Advisory Opinion A15-18 (April 25, 2018). In reaching this conclusion, however, the Commission emphasized the fact-sensitive nature of the issue, noting that while "generally speaking, Board members are able to volunteer for activities that support their children within the district without violating the Act . . . [they] should refrain from certain activities in order to avoid running afoul of the Act." Ibid. In the context of serving as a PTA leader, for instance, the Commission advised the Board member to "advise the Superintendent and relevant staff that she will be performing this work and, when doing so, she will be there in her capacity as a volunteer and parent, not as a Board member." Ibid. The Commission further advised that a Board member volunteering as a parent organization leader "must be mindful of [the] fact" that "a violation of the Act may occur in any given scenario." Ibid. The Board advised of such precautions even where it was only known that the president of the PTA "oversees all aspects of the PTA, sets the agenda for and presides over the . . . meetings . . ., which are attended by parent volunteers, some teachers and the building Principal." Ibid.

This case is far removed from the one contemplated in the Commission's guidance. Here, while Respondent may not be per se prohibited from serving as a Board member and president of the PSA, the involvement of his personal business in PSA fundraising activities, that business's notoriety in the township, and his interactions with district staff created a clear appearance of impropriety. Respondent engaged with staff from an email bearing the name of his private company and served members of the community from his company's place of business. Under these circumstances, a reasonable member of the public could easily perceive his position as a Board member compromised by his personal interests. Without any attempt to cure these risks, Respondent's actions violate the Act and warrant a penalty.

Finally, with respect to N.J.S.A. 18A:12-24(c), Respondent again created an appearance of impropriety by requesting then-Principal Chanley to personally send out advertisements while also being a Board member responsible for voting on her salary. While Chanley's salary may have been preordained based on a negotiated salary guide, a reasonable member of the public could still conclude Respondent's position as a Board member was compromised. Whether Respondent's actions taken with respect to her salary were ceremonial, Respondent, solely by virtue of being a Board member, nonetheless had significant authority over Principal Chanley such that a member of the public could conclude any requests made to Chanley to advertise sales of Respondent's business's goods were undergirded by such authority. This potential for conflict is also sufficient to warrant a penalty.

POINT II

RESPONDENT SHOULD BE CENSURED FOR HIS VIOLATION OF THE SCHOOL ETHICS ACT.

Upon finding a violation of the Act or the Code, this tribunal must recommend to the Commission an appropriate penalty in the form of a reprimand, censure, suspension, or removal. N.J.S.A. 18A:12-29(c). A reprimand is "a rebuke by the Commissioner of a school official for having been found to have breached the standards of conduct prescribed by [the Act]." N.J.A.C. § 6A:28-

1.2. A censure is "a formal expression of disapproval by the Commissioner which is publicized by the adoption of a formal resolution by the School Ethics Commission and the school official's district board of education . . . at a public meeting." Ibid.

In determining the appropriate penalty, this tribunal must look both to the nature of the offenses and the effects of any aggravating and/or mitigating circumstances. See In re Ethylene Grimsley, C21-04 (Jan. 22, 2008) aff'd, Comm'r. of Ed. Decision No. 79-08(Feb. 19, 2008). Relatedly, as stated above, a central tenet of the Act is that board members must "avoid conduct which is in violation of their public trust or which creates a justifiable impression among the public that such trust is being violated." Holstein v. Raftopoulos-Johnson, Montague Bd. of Educ., Sussex Cnty., C14-15, and IMO Tacia Raftopoulos-Johnson, Montague Bd. of Educ., Sussex Cnty., C08-16 (consolidated) (Feb. 26, 2020) (citing N.J.S.A. 18A:12-22)(emphasis added).

Censure is often an appropriate remedy when the Commission needs it to be known that certain conduct violates the School Ethics Act, or to inform the public that the Commission will not allow such situations to exist. IMO Christopher C. Treston, Randolph Township Bd. of Educ., Morris Cnty., C71-18 (Jan. 27, 2021). Reprimand, on the other hand, may be appropriate when action does not raise any "real concern about the integrity of [the respondent]," but a point must be made that even in "seemingly benign matters, the level of conduct expected of public officials, too often not realized, must be such as to be beyond reproach." Ibid.

Respondent 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. By holding positions as a Board member, PSA president, and owner of the PSA's chief vendor, Respondent's requests to the district and personal involvement in PSA business, which utilized his and his wife's private companies, created great potential for conflict. Despite these patent risks of impropriety, Respondent did nothing to cure any actual or perceived conflicts.

Because Respondent no longer serves on the Board, a penalty of at least censure is necessary. Respondent's conduct warrants censure as it must be made clear, to both members of boards of education as well as the general public, that while a board member is permitted to participate in activities as a private citizen and concerned parent, they must avoid all possible conflicts and any appearance of impropriety. A member's right to participate in civic life does not eliminate his or her duties to the public and obligations under the Act. It 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 he serves.

Conclusion

For the reasons stated above, Respondent, Adi Nikitinsky, violated the School Ethics Act, warranting censure.

Sincerely yours,

MATTHEW J. PLATKIN
ATTORNEY GENERAL OF NEW JERSEY

By: /s/ Kevin F. Milton
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