

Before the School Ethics Commission
OAL Docket No.: EEC-04007-21
SEC Docket No.: C70-20
Final Decision

In the Matter of Daniel Fishbein,
Ridgewood Board of Education, Bergen County,
Respondent

I. Procedural History

The above-captioned matter arises from a Complaint that was filed on October 30, 2020, by Laurie Weber (Complainant), alleging that Daniel Fishbein (Respondent), the former Superintendent of the Ridgewood School District (District), violated the School Ethics Act (Act), *N.J.S.A. 18A:12-21 et seq.* More specifically, the Complaint averred that Respondent violated *N.J.S.A. 18A:12-24(b)* in Counts 1-4.

On November 4, 2020, the Complaint was served on Respondent, via electronic mail, notifying him that charges were filed against him with the School Ethics Commission (Commission), and advising that he had twenty (20) days to file a responsive pleading.¹ On November 24, 2020, Respondent filed a Motion to Dismiss in Lieu of Answer (Motion to Dismiss), and also alleged that the Complaint is frivolous. On December 14, 2020, Complainant filed a response to the Motion to Dismiss and allegation of frivolous filing.

At its meeting on February 23, 2021, and following a review and discussion of the parties' pleadings at a previous meeting, the Commission adopted a decision granting the Motion to Dismiss as to the allegations in Count 3 and Count 4; denying the Motion to Dismiss as to the allegations in Count 1 and Count 2; finding the Complaint not frivolous and denying Respondent's request for sanctions; and directing Respondent to file an Answer to Complaint (Answer) for the remaining allegations. On March 12, 2021, Respondent filed an Answer as directed.

Thereafter, and at its meeting on April 27, 2021, the Commission adopted a decision finding probable cause for the alleged violation of *N.J.S.A. 18A:12-24(b)* in Count 1, but not finding probable cause for the alleged violation of *N.J.S.A. 18A:12-24(b)* in Count 2. Following its finding of probable cause, the Commission filed the above-captioned matter with the Office of Administrative Law (OAL) as a contested matter and, pursuant to *N.J.A.C. 6A:28-10.7(b)*, the attorney for the Commission (Petitioner) was charged with prosecuting the allegations in the Complaint which the Commission found probable cause to credit.

At the OAL, the above-captioned matter was assigned to the Honorable Thomas R. Betancourt, Administrative Law Judge (ALJ Betancourt). *Initial Decision* at 1. ALJ Betancourt

¹ Due to the ongoing Coronavirus (COVID-19) pandemic, service of process was effectuated by the Commission through electronic transmission only.

conducted hearings on August 12, 2021, and November 2, 2021; Respondent submitted a post-hearing brief on January 20, 2022; Petitioner “submitted an incorrect brief, dated January 22, 2022, but not received until March 4, 2022, due to some error by Petitioner’s counsel”; ALJ Betancourt “permitted Petitioner to file a brief thereafter, which was received on April 11, 2022”; Respondent filed a reply brief to Petitioner’s filing on April 19, 2022; and thereafter, the record closed. *Id.* at 2.

On April 28, 2022, ALJ Betancourt issued an *Initial Decision* detailing his findings of fact and legal conclusions. The Commission acknowledged receipt of ALJ Betancourt’s *Initial Decision* on the date it was issued (April 28, 2022); therefore, the forty-five (45) day statutory period for the Commission to issue a Final Decision was June 13, 2022.² Prior to June 13, 2022, the Commission requested a forty-five (45) day extension of time to issue its decision so as to allow the Commission, which only meets monthly, the opportunity to receive and review the full record, including the parties’ Exceptions (if any). 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 July 28, 2022.

At its meeting on June 28, 2022, the Commission considered the full record in this matter. Thereafter, and at its meeting on July 26, 2022, the Commission voted to **adopt** the findings of fact set forth in ALJ Betancourt’s *Initial Decision*; **reject** the determination that a violation of *N.J.S.A.* 18A:12-24(b), and/or any other provision of the Act, requires intent; **adopt** the determination that the “relevant, competent credible evidence” was insufficient to establish a violation of *N.J.S.A.* 18A:12-24(b); and to dismiss the above-captioned matter.

II. Initial Decision

As summarized by ALJ Betancourt, the issue in the above-captioned matter is whether Respondent violated *N.J.S.A.* 18A:12-24(b) when he sent an email on May 4, 2020, “containing links to Ridgewood Walks’ Facebook webpage, which endorsed political candidates.” *Id.* at 2.

In this matter, several witnesses offered testimony, namely Complainant; Jeanne Johnson (Ms. Johnson), a community activist and the founder of Ridgewood Walks; and Saurabh Dani (Mr. Dani), a member of the Ridgewood Board of Education (Board), and all were found to be credible. *Id.* at 2-4. To the extent witnesses may have offered inconsistent statements, ALJ Betancourt found that, “none of them are of significant consequence” *Id.* at 4.

The parties also jointly stipulated to thirty (30) facts, namely:

1. Respondent served as the District Superintendent from July 15, 2008, to his retirement on December 10, 2020.
2. During his tenure, Respondent emailed updates to the school community.

² Technically, forty-five (45) days after April 28, 2022, was Sunday, June 12, 2022; by rule, the deadline was extended until the next business day, which was Monday, June 13, 2022.

3. On or about May 4, 2020, Respondent sent out an email to the school community titled “COVID-19 Daily Update.”

4. The May 4, 2020, email contained information regarding “Ridgewood Rocks” and other initiatives conducted by Ridgewood Walks.

5. Ridgewood Walks is administered by Jeanne Johnson. Ms. Johnson is a fellow Ridgewood resident and the founder of Ridgewood Walks.

6. Ridgewood Walks is a non-profit initiative that encourages health and safety by promoting walking as a way to connect residents, businesses and neighbors of Ridgewood, New Jersey. Throughout the year, Ridgewood Walks hosts month-long walking tours, such as “Walktoberfest” in October, and “Step Into Summer!” in June. During these tours, Ridgewood residents can learn about the Village of Ridgewood's history and meet neighbors, local business owners and community service leaders, including the Ridgewood Public School Administration.

7. In or around the end of April, 2020, Ridgewood Walks started a COVID-related initiative titled Ridgewood Rocks. Ridgewood Rocks was marketed as a way of providing some COVID-19 stress relief and mental wellness throughout the village by placing painted rocks throughout with inspiring messages.

8. Respondent became aware of the Ridgewood Rocks initiative and provided information about it in his May 4, 2020, Daily Update, which included a link to the Ridgewood Walks Facebook page.

9. Respondent’s May 4, 2020, email further provided for a time, date, and method to thank doctors, nurses, healthcare workers, and other essential employees, and also suggested a way to thank frontline workers by providing meals to them.

10. Respondent’s May 4, 2020, email also provided webpage links to other organizations like the Red Cross and the Social Services Association of Ridgewood (SSA).

11. On the Ridgewood Walks Facebook page, Ms. Johnson posted a message in which she promoted the candidacy of Pamela Perron for Ridgewood Village Council, and the candidacies of those who were running against then-candidate for the Ridgewood Board of Education, Mr. Dani.

12. Ms. Johnson has also worked for other local initiatives, such as Feeding the Frontlines, a nonprofit organization made up of the Ridgewood Chamber of Commerce, and HealthBarn Foundation, that was created to provide meals to first responders during the COVID pandemic.

13. Ms. Johnson also served as the Campaign Chairperson for Pamela Perron’s 2019 election campaign for the Ridgewood Village Council.

14. On March 31, 2020, Ms. Johnson used the Ridgewood Walks Facebook page to promote a message she received from Ms. Perron about the upcoming Ridgewood Board of Education and Ridgewood Village Council elections.

15. On October 20, 2017, Respondent served as a tour guide on a walking tour that Ridgewood Walks organized and promoted.

16. On or around October 4, 2018, Respondent served as a tour guide on a walking tour that Ridgewood Walks organized and promoted.

17. On or around June 10, 2019, Respondent served as a tour guide on a walking tour that Ridgewood Walks organized and promoted.

18. On or around October 27, 2019, Respondent served as a tour guide on a walking tour that Ridgewood Walks organized and promoted.

19. On April 5, 2018, Ms. Johnson interviewed Respondent in his capacity as Superintendent on the Ridgewood Walks Ridgewood Talks podcast to discuss Ridgewood Board of Education policy issues like the school budget, school safety, special education, and full-day kindergarten.

20. Around late March/early April 2019, Ms. Johnson again interviewed Respondent on the Ridgewood Walks Ridgewood Talks podcast to discuss Ridgewood Board of Education policy issues like the 2019-2020 school budget and campus security.

21. Respondent received messages of support and praise from Ms. Johnson.

22. Three (3) of the six (6) candidates that Ridgewood Walks endorsed for the municipal/education elections won their respective elections in 2020.

23. One of the candidates elected to the Ridgewood Board of Education that was not endorsed by Ridgewood Walks, is Saurabh Dani.

24. Prior to being elected on May 12, 2020, Mr. Dani attended the following regularly held monthly Board of Education meetings (as a community member): August 27, 2018; October 8, 2018; October 25, 2018; November 5, 2018; November 19, 2018; January 7, 2019; January 28, 2019; March 11, 2019; and May 20, 2019.

25. During the public portion of the aforementioned Board meetings, Mr. Dani would often comment about certain Board of Education policies.

26. Respondent was present at these Board meetings and would sometimes address the comments made by Mr. Dani.

27. One of the issues that was frequently discussed at these Board meetings was whether to move Board elections back to the general election day that took place every November.

28. Moving the Board's election date back to November would eliminate the Ridgewood community's ability to vote on the Board's annual school budget if the proposed tax levy increase was within 2%.

29. On October 30, 2020, Complainant filed a Complaint against Respondent alleging he violated *N.J.S.A.* 18A:12-24(b), which provides: 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;

30.³ While neither Respondent nor his family members or relatives has any direct or indirect financial or proprietary interest in Ridgewood Rocks or Ridgewood Walks, Complainant alleges that by including the link to Ridgewood Walks' Facebook webpage, Respondent "hoped to lend the reach and implied endorsement of those candidates that his official position afforded them, thereby influencing the election in their favor."

Id. at 4-8.

In addition, based on the documentary evidence submitted, as well as the testimonial evidence provided by witnesses, ALJ Betancourt made the following additional findings of fact:

1. The endorsement posted on the Ridgewood Walks Facebook page was not posted until May 5, 2020.
2. Respondent did not know about the endorsement at the time he issued his May 4, 2020, email.
3. Respondent did not speak to Ms. Johnson about endorsing any candidates.
4. Ms. Johnson was unaware that Respondent linked to Ridgewood Walks.
5. Ms. Johnson did not receive Respondent's emails.

Id. at 8.

In the *Legal Analysis and Conclusion* section of his *Initial Decision*, ALJ Betancourt found that the facts "established in the within matter do not remotely suggest that [Respondent] had the requisite intent to violate" *N.J.S.A.* 18A:12-24(b). *Id.* at 10. According to ALJ Betancourt, Ridgewood Walks "had never previously endorsed a candidate" and, when it did, it did "after [Respondent] issued the email which is the subject matter of this case." *Id.* Consequently, "he could not have known of the endorsement when the email was sent," and did not have "the requisite intent required." *Id.*

ALJ Betancourt also found that, contrary to Petitioner's argument that the Local Government Ethics Law and the Act are distinguishable because they are two different laws, and that the Act does not require intent, ALJ Betancourt determined that, "This argument fails" and

³ In the *Initial Decision*, this Finding of Fact is incorrectly numbered 31.

ignores the fact that the laws have “nearly identical language.” *Id.* As such, to “conclude that” the Local Government Ethics Law requires intent (per the Appellate Division), and the Act does not, “is not correct.” *Id.*

In this case, the endorsement in question was not made until May 5, 2020, which was the day after Respondent’s email with the link to Ridgewood Walks was sent; thus, Respondent “could not have formed the requisite intent to violate *N.J.S.A.* 18A:12-24(b).” *Id.*

ALJ Betancourt noted it was “interesting” that, although Petitioner maintains that intent is not required to sustain a violation of *N.J.S.A.* 18A:12-24(b), most of the case centered around Respondent’s interactions with Mr. Dani over the course of several years, in an “attempt to show an animus between them, and infer a motive, and intent, to endorse other candidates.” *Id.* at 10-11. According to ALJ Betancourt, the attempt failed because the endorsement came the day after Respondent sent his email. *Id.* at 11. ALJ Betancourt further found that whether Respondent has an animus towards Mr. Dani is irrelevant, as was much of the other testimony offered by the witnesses, with the exception of Ms. Johnson’s “testimony as to the date she posted the endorsement and whether ... she spoke with [Respondent] about it.” *Id.*

Based upon “the relevant, competent credible evidence presented in this matter,” ALJ Betancourt concludes that Respondent did not violate *N.J.S.A.* 18A:12-24(b), and orders that the Complaint be dismissed with prejudice. *Id.*

III. Exceptions

Petitioner’s Exceptions

In its May 18, 2022, Exceptions to the *Initial Decision*, Petitioner first argues that ALJ Betancourt included “five additional findings of fact,” two of which are not supported by evidence and testimony on record. More specifically, ALJ Betancourt was incorrect in finding as fact that “Ms. Johnson was unaware that [Respondent] linked to Ridgewood Walks,” and that “Ms. Johnson did not receive [Respondent’s] emails.”

Petitioner further argues that the finding of fact that Respondent “did not speak with Ms. Johnson about endorsing any candidate” “is not supported by the record.” According to Petitioner, “The record clearly demonstrates that on May 5, 2020, Respondent’s work email account was one of the accounts on Ms. Johnson’s email distribution list that received a copy of her political endorsement message.”

The finding that “Ms. Johnson was ‘unaware that [Respondent] linked to Ridgewood Walks,’ is [also] refuted by the record.” Per Petitioner, Respondent’s May 4, 2020, email, “unambiguously demonstrates that the information Respondent was conveying about Ridgewood Walks was a message that came directly from the administrators of Ridgewood Walks, rather than” from Respondent himself, as it contained numerous references to “we,” “our,” and “us.” In addition, Ms. Johnson testified that “any time [she] wanted to promote an initiative of an organization she was involved with on the [Board’s] email newsletter, she had to ask for Respondent’s permission.” In sum, ALJ Betancourt’s conclusion that Ms. Johnson “did not receive” Respondent’s emails, and was unaware that Respondent “would link or promote

Ridgewood Walks in the Board's email newsletter on May 4, 2020," is not supported by the record. Therefore, the Commission should reject those facts.

Petitioner further argues that ALJ Betancourt's "conclusion" that Respondent did not violate *N.J.S.A.* 18A:12-24(b) is "based upon a flawed legal analysis" that "stems from the premise that the wording in *N.J.S.A.* 18A:12-24(b) 'is nearly identical' to the wording in an entirely different body of law – the Local Government Ethics Law" According to Petitioner, ALJ Betancourt incorrectly concludes that a violation of *N.J.S.A.* 18A:12-24(b) "requires intent"; therefore, this conclusion should be rejected because it "improperly substitutes the statutory interpretations and legal precedents that the Commission has specifically applied to school officials whose ethics violations are governed by the Act, with those that our courts have applied to government officials whose ethics violations are governed by the Local Government Ethics Law." ALJ Betancourt also ignored the "plain instructions" in the Commission's probable cause notice which verified that a violation of *N.J.S.A.* 18A:12-24(b) could be found if his actions "had the appearance of endorsing" certain candidates, or "had the appearance of resulting" in an advantage for some candidates to the detriment of others.

Moreover, Petitioner asserts "[n]either the Act nor the Commission require that a school official succeed in securing unwarranted benefit for themselves, family members, or others in order to find a violation of *N.J.S.A.* 18A:12-24(b)." Petitioner further asserts it has been previously demonstrated that a school official may violate the Act "by engaging in conduct that appears designed for the purpose of supporting only certain candidates in an election campaign." According to Petitioner, it is important to note that the Commission has determined that a school official who engages "in conduct that appears to support certain election candidates can still be found to violate the Act," regardless of their intention behind the action.

Per Petitioner, "it is undisputed that anyone who clicked the link in Respondent's May 4, 2020[,] email ... would have been brought to a webpage which contained an endorsement message from [Ms.] Johnson that explicitly promoted certain candidates over others" Therefore, Petitioner asserts it has been established that Ms. Johnson "was publicly associated with a candidate in the upcoming campaign," and was "known to use her social media platforms ... to promote her political agenda." Petitioner further showed that Respondent "was made aware, or should have been aware," after interviews for the podcast that Ms. Johnson used the platform to "promote the agenda of certain local political figures." Petitioner additionally demonstrated that "Respondent should have been made even more aware of this fact" after Mr. Dani said as much in his April 13, 2020, email.

Petitioner maintains, "[r]egardless of Respondent's intent, any reasonable member of the Ridgewood community who viewed his May 4[, 2020,] email could infer that it was sent for the purpose of endorsing an entity known to directly promote certain candidates in the upcoming election." Petitioner further maintains "the Commission's interpretation of *N.J.S.A.* 18A:12-24(b) is reasonable and consistent" Therefore, the Commission must reject ALJ Betancourt's "improper substitution of its judgement for that of his own."

Finally, citing *I/M/O Grimsley*, Roselle Board of Education, Docket No. C21-04 (January 22, 2008) and *I/M/O Raftopoulos-Johnson*, Montague Board of Education, Docket No. C14-15 and C08-16 (Consolidated) (February 25, 2020) among others, Petitioner contends because

Respondent and the community were “fully aware” that Ms. Johnson “was a community member who was very active in local government,” because Respondent was warned about the content and appearance of including the links to Ridgewood Walks in his correspondence by Mr. Dani a month before he (Respondent) sent his May 4, 2020, email, and because Respondent was a veteran Superintendent and “familiar with his obligation to avoid the appearance of supporting election candidates,” Respondent’s actions violated the public trust, and a “penalty of at least censure” is appropriate.

Respondent’s Reply to Petitioner’s Exceptions

In his reply to Petitioner’s Exceptions, which was filed on May 20, 2022, Respondent contends that, contrary to Petitioner’s assertions, ALJ Betancourt accurately concluded that he did not violate the Act “because [he] could not have intended that Ridgewood Walks would have later endorsed a Board member candidate.”

As to the ALJ’s interpretation of the “statutory language” of *N.J.S.A.* 18A:12-24(b), Respondent notes that because *N.J.S.A.* 18A:12-24(b) and the Local Government Ethics Law are nearly identical both in language and goals, which is to ensure that government employees do not use their position for personal gain, ALJ Betancourt correctly determined that, given the determination in *Mondsini v. Loc. Fin. Bd.*, 458 N.J. Super 290 (App. Div. 2019), an element of intent is necessary to establish a violation of *N.J.S.A.* 18A:12-24(b).

As to the Ridgewood Walk link, Respondent asserts Petitioner overlooked the fact that Ms. Johnson testified that she did not consider endorsing candidates for the Board “until ten (10) minutes before posting” and/or that she testified she no longer received Respondent’s “Daily Updates” because she no longer had children in the District. Therefore, Respondent asserts that because he was “unaware of Ms. Johnson’s intent to post endorsements on the Ridgewood Walks Facebook page, it cannot be established that [] Respondent *intended* for the viewers of Respondent’s Update to see Ms. Johnson’s endorsements, let alone that such actions were taken for personal gain.”

In sum, Respondent maintains the Commission should “uphold” ALJ Betancourt’s Initial Decision, the ALJ’s “five additional facts were supported by clear credible testimony,” and the Commission “should not condone such blatant false statements and must dismiss the allegation against Respondent.”

IV. Analysis

Following receipt of an initial decision, “the Commission may reject or modify conclusions of law, interpretations of agency policy, or findings of fact not relating to issues of credibility of lay witness testimony, but shall clearly state the reasons for so doing.” *N.J.A.C.* 1:1-18.6. Further, the “order or final decision rejecting or modifying the initial decision shall state in clear and sufficient detail the nature of the rejection or modification, the reasons for it, the specific evidence at hearing and interpretation of law upon which it is based and precise changes in result or disposition caused by the rejection or modification.” *Id.*

Upon a careful, thorough, and independent review of the record, the Commission **adopts** the findings of fact detailed in ALJ Betancourt’s *Initial Decision*, as it finds no basis upon which

to reject or modify those findings. However, the Commission **rejects** the determination that a violation of *N.J.S.A.* 18A:12-24(b), and/or any other provision of the Act, requires intent. Although the Commission rejects ALJ Betancourt’s decision in this regard, it still **adopts** the determination that the “relevant, competent credible evidence” was insufficient to establish a violation of *N.J.S.A.* 18A:12-24(b).

In the *Legal Analysis and Conclusion* section of the *Initial Decision*, ALJ Betancourt reasoned that because the Act “was patterned after the Local Government Ethics Law,” and the Appellate Division found that a similar provision from the Local Government Ethics Law (“No local government officer or employee shall use or attempt to use his official position to secure unwarranted privileges or advantages for himself or others”) required intent, so too does a violation of *N.J.S.A.* 18A:12-24(b). *Id.* at 9-10. The Commission resoundingly **rejects** this conclusion and/or interpretation of agency policy, as well as any suggestion that a violation of *any* provision of the Act, not just *N.J.S.A.* 18A:12-24(b), requires proof of intent.

The legislature’s findings and declarations for the Act specifically state that school officials “must avoid conduct which is in violation of their public trust or *which creates a justifiable impression among the public that such trust is being violated.*” *N.J.S.A.* 18A:12-22(a) (emphasis added). Even if certain provisions from the Act appear to be “patterned” after provisions from the Local Government Ethics Law, notably absent from the legislature’s findings and declarations for the Local Government Ethics Act is any requirement for local government officers or employees to avoid conduct “which creates a justifiable impression among the public that [the public] trust is being violated.” In short, the standards that guide the conduct of local government officers and employees, the legislative purpose for the enactment of those standards, and the circumstances under which a violation can be substantiated are not identical to those that govern the conduct of school officials.

Instead, the Commission has consistently found violations of the Act based on what a reasonable member of the public would believe, not what a school official may have intended. *I/M/O Perrino*, Little Egg Harbor Township Board of Education, Docket No. C30-14 (July 28, 2015) (citing *I/M/O Haines*, Haddonfield Board of Education, Docket No. C07-00 (September 27, 2000)).

By way of example, in *I/M/O Anderson*, High-Point Regional Board of Education, Sussex County, Docket No. C45-19 (August 30, 2021), the Commission adopted a decision finding that a school official violated the Act, and *N.J.S.A.* 18A:12-24(b) in particular, when she voted on the superintendent’s achievement of a merit goal at a time when her child was employed in the district (and was supervised by the superintendent). In finding a violation, the ALJ emphasized the legislative intent/purpose of the Act; affirmed the Commission’s role as the “guardian of the public interest”; cited to decisions that reinforce the public policy that school officials must avoid “even the appearance of impropriety” (e.g., *Wyzsykowski v. Rizas*, 132 N.J. 509 (1993); *Friends Retirement Concepts v. Bd. Of Educ. Borough of Somerville*, 356 N.J. Super 203, 214 (Law Div. 2002) (*Friends*)); emphasized that, per *Friends*, the “question will always turn on ‘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’”; noted that “[a]n actual conflict of interest is not the decisive factor, nor is ‘whether the public servant succumbs to temptation,’ but rather whether there is a potential for conflict”; and affirmed that “[a]

conflicting interest arises when the public official has an interest not shared in common with the other members of the public.” *I/M/O Anderson* at 5. The ALJ also stated:

The legislative findings and declarations, the seminal decision in *Friends*, and the advisory opinions make plain that [Respondent] should have recused herself. ... *A24-17*, issued more than a year before the vote, clearly mandates that [Respondent] be uninvolved in any matter regarding the [S]uperintendent while her [child] was an employee in the [D]istrict. [Respondent's] vote created the potential conflict the *Friends*' Court warned against and could reasonably be interpreted to show that it had the likely capacity to tempt [Respondent] from her sworn public duty. In other words, that she exerted an undue influence over the individual responsible for securing her [child's] employment. Notably, the board member needs not to secure unwarranted benefits for their relative to violate the Act.

Id. In short, in finding a violation of *N.J.S.A.* 18A:12-24(b) in *I/M/O Anderson*, the ALJ did not evaluate whether the school official intended to secure an unwarranted privilege, advantage, or employment for herself, a member of her immediate family, or an “other” (a non-dependent) child, only whether the school official’s action, despite her insistence that her actions was “ministerial” and had no impact on the outcome, created a justifiable impression among the public that Anderson used her official position as a board member to secure an unwarranted privilege or advantage for her child. *Id.* at 11 (*affirmed* by the Commissioner of Education, [I/M/O Anderson](#), High Point Regional Board of Education, Agency Docket No. 187-8/21 (November 29 29, 2021)).

The Commission has also adopted decisions finding violations of the Act even when the subject school official did not specifically intend or desire for their conduct to have caused its fated outcome but it, nonetheless, violated the Act. *See e.g.*, [Fleres v. Zhong](#), West Windsor-Plainsboro Board of Education, Docket No. C17-18 (May 2, 2019) (*affirmed* by the Commissioner of Education, [Fleres v. Zhong](#), West-Windsor-Plainsboro Board of Education, Agency Docket No. 152-19SEC, (June 18, 2019)).

With the foregoing in mind, the Commission *rejects* the conclusion and/or interpretation of agency policy that intent is required to prove a violation of the Act and, in this case, a violation of *N.J.S.A.* 18A:12-24(b).

Although the Commission has dispensed with the requirement that Petitioner needed to prove intent to establish a violation of *N.J.S.A.* 18A:12-24(b), the Commission still agrees that, based on a comprehensive review of the full record, and the fact that the endorsement did not appear on the Ridgewood Walks website until the day *after* Respondent sent his May 4, 2020, email to the Ridgewood community, there is insufficient evidence to support a violation of *N.J.S.A.* 18A:12-24(b). Absent other sufficient and competent evidence in the record including, without limitation, that the endorsement was “live” on the Ridgewood Walks website at the time he sent his May 4, 2020, email, or that the Ridgewood Walks website was used (in the past) to promote certain *Board* (not just Council) candidates, a violation of *N.J.S.A.* 18A:12-24(b) is not supportable.

V. Decision

As further detailed above, and after review, the Commission **adopts** the findings of fact detailed in ALJ Betancourt's *Initial Decision*; **rejects** the determination that a violation of *N.J.S.A.* 18A:12-24(b), and/or any other provision of the Act, requires intent; **adopts** the determination that the "relevant, competent credible evidence" was insufficient to establish a violation of *N.J.S.A.* 18A:12-24(b); and dismisses the above-captioned matter.

Therefore, this is a final agency decision and is appealable only to the Superior Court-Appellate Division. *See, N.J.A.C.* 6A:28-10.11 and *New Jersey Court Rule* 2:2-3(a).

Robert W. Bender, Chairperson

Mailing Date: July 26, 2022

**Resolution Adopting Decision
in Connection with C70-20**

Whereas, on or about April 27, 2021, the School Ethics Commission (Commission) adopted a decision transmitting the above-captioned matter to the Office of Administrative Law (OAL) for a hearing; and

Whereas, following hearings, the Honorable Thomas R. Betancourt, Administrative Law Judge (ALJ Betancourt) issued an *Initial Decision* dated April 28, 2022; and

Whereas, in his *Initial Decision*, ALJ Betancourt issued findings of fact and found that Respondent did not violate *N.J.S.A. 18A:12-24(b)*; and

Whereas, Petitioner filed Exceptions to the *Initial Decision*, and Respondent filed a response to Petitioner’s Exceptions;

Whereas, at its meeting on June 28, 2022, the Commission reviewed and discussed the full record in the above-captioned matter; and

Whereas, at its meeting on June 28, 2022, the Commission discussed adopting the findings of fact from ALJ Betancourt’s *Initial Decision*; rejecting the determination that a violation of *N.J.S.A. 18A:12-24(b)*, and/or any other provision of the Act, requires intent; adopting the determination that the “relevant, competent credible evidence” was insufficient to establish a violation of *N.J.S.A. 18A:12-24(b)*; and dismissing the above-captioned matter; and

Whereas, at its meeting on July 26, 2022, the Commission reviewed and voted to approve the within decision as accurately memorializing its actions/findings from its meeting on June 28, 2022; and

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

Robert W. Bender, Chairperson

I hereby certify that the Resolution was duly adopted by the School Ethics Commission at its public meeting on July 26, 2022.

Kathryn A. Whalen, Esq.
Director, School Ethics Commission