

Before the School Ethics Commission
OAL Docket No.: EEC-03599-21
OAL Docket No.: EEC-04799-19 (On Remand)
SEC Docket No.: C45-18
Final Decision

In the Matter of Anne Mucci, et al.,
Mountain Lakes Board of Education, Morris County,
Respondents

I. Procedural History

The above-captioned matter arises from a Complaint that was initially filed with the School Ethics Commission (Commission) on July 16, 2018, by Mark DiIunno (Complainant), alleging that Anne Mucci, the Superintendent of the Mountain Lakes School District (District), and Elena Goldwaite, James Hirschfeld, Joanne Barkauskas, Lydia Cipriani-Soto, Jack Gentul, John Kaplan, William Koy, Julie Shepherd, and Patricia Collins, members of the Mountain Lakes Board of Education (Board) (collectively Respondents), violated the School Ethics Act (Act), *N.J.S.A.* 18A:12-21 *et seq.*¹ The Complaint averred that Respondent Mucci violated *N.J.S.A.* 18A:12-24(b) and *N.J.S.A.* 18A:12-24(c) in Count 1, and that all other named Respondents (except Respondent Mucci) violated *N.J.S.A.* 18A:12-24(b) and *N.J.S.A.* 18A:12-24(c) in Count 2, *N.J.S.A.* 18A:12-24.1(b) in Count 3, and *N.J.S.A.* 18A:12-24.1(c) in Count 4.

At its meeting on December 18, 2018, and after reviewing the parties' respective submissions, the Commission adopted a decision granting Respondents' Motion to Dismiss in Lieu of Answer (Motion to Dismiss) as to the alleged violations of *N.J.S.A.* 18A:12-24(b) and *N.J.S.A.* 18A:12-24(c) in Count 2 by all named Respondents (except Respondent Hirschfeld), the alleged violation of *N.J.S.A.* 18A:12-24.1(b) in Count 3 by all named Respondents, and the alleged violation of *N.J.S.A.* 18A:12-24.1(c) in Count 4 by all named Respondents; denying the Motion to Dismiss as to the alleged violations of *N.J.S.A.* 18A:12-24(b) and *N.J.S.A.* 18A:12-24(c) in Count 1 by Respondent Mucci, and *N.J.S.A.* 18A:12-24(b) and *N.J.S.A.* 18A:12-24(c) in Count 2 by Respondent Hirschfeld; and directing Respondent Mucci and Respondent Hirschfeld to file an Answer to Complaint (Answer) as to the remaining allegations in the Complaint. On January 9, 2019, the remaining Respondents filed an Answer as directed, and the above-captioned matter was docketed in order for the Commission to make a determination regarding probable cause.

Thereafter, and at its meeting on March 26, 2019, the Commission adopted a decision finding probable cause for the allegations that Respondent Mucci violated *N.J.S.A.* 18A:12-24(b) and *N.J.S.A.* 18A:12-24(c) as argued in Count 1, and finding probable cause for the allegations that Respondent Hirschfeld violated *N.J.S.A.* 18A:12-24(b) and *N.J.S.A.* 18A:12-24(c) as set

¹ On July 16, 2018, Complainant filed a deficient Complaint; however, on July 31, 2018, 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.

forth in Count 2. 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 plenary hearing 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 matter was initially assigned to the Honorable Kimberly A. Moss, Administrative Law Judge, but, due to a conflict of interest, it was subsequently re-assigned to the Honorable John P. Scollo, Administrative Law Judge (ALJ Scollo). On April 7, 2020, which was “[a]fter depositions were obtained and after several other case management conferences were held,” Respondent Mucci filed a Motion for Summary Decision. *Initial Decision (On Remand)* at 3. On May 15, 2020, Petitioner filed its opposition to Respondent Mucci’s Motion for Summary Decision, and a Cross-Motion for Summary Decision. *Id.* at 3-4. Respondent Hirschfeld filed his Motion for Summary Decision, and opposition to Petitioner’s Cross-Motion for Summary Decision, on May 15, 2020. *Id.* at 4. On September 9, 2020, ALJ Scollo issued an *Initial Decision* detailing his findings of fact and legal conclusions relating to all three Motions for Summary Decision. *Id.*

At its meeting on January 26, 2021, and after discussing and reviewing the full record, including ALJ Scollo’s *Initial Decision* and the filed Exceptions (and related response), the Commission adopted a decision remanding the matter to the OAL as follows:

- ❖ Because the Commission determined that ALJ Scollo improperly admitted the Requests for Admission (RFAs), the above-captioned matter was remanded so that ALJ Scollo could reconsider whether, without the RFAs admitted, there are sufficient facts to support a finding that Respondent Mucci violated *N.J.S.A. 18A:12-24(b)* and/or *N.J.S.A. 18A:12-24(c)* in Count 1, and/or Respondent Hirschfeld violated *N.J.S.A. 18A:12-24(b)* and/or *N.J.S.A. 18A:12-24(c)* in Count 2; and
- ❖ Because the Commission determined that ALJ Scollo improperly concluded that the Act requires intent, the above-captioned matter was remanded so that ALJ Scollo could reconsider whether, without requiring a demonstration of intent, there are sufficient facts to support a finding that Respondent Mucci violated *N.J.S.A. 18A:12-24(b)* and/or *N.J.S.A. 18A:12-24(c)* in Count 1, and/or Respondent Hirschfeld violated *N.J.S.A. 18A:12-24(b)* and/or *N.J.S.A. 18A:12-24(c)* in Count 2.

Id. at 5-6.

On remand, “the parties filed briefs clarifying their respective positions in July, 2021.” *Id.* at 4.

On March 22, 2022, ALJ Scollo issued an *Initial Decision (On Remand)*, with same detailing his findings of fact, and conclusions of law. The Commission acknowledged receipt of ALJ Scollo’s *Initial Decision (On Remand)* on the date it was issued (March 22, 2022); therefore, the forty-five (45) day statutory period for the Commission to issue a Final Decision was May 6, 2022. Prior thereto, 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. Pursuant to *N.J.S.A. 52:14B-10(c)* and *N.J.A.C. 1:1-18.8*, the Commission was granted an extension until June 20, 2022. Before the deadline elapsed (on June 20, 2022), the Commission requested and received, with the parties' consent, a second extension until August 4, 2022, to issue the within decision.

With the above in mind, at its meeting on June 28, 2022, the Commission considered the full record in the above-captioned matter. Thereafter, at its meeting on July 26, 2022, the Commission voted to reject the determination that the RFAs were properly admitted; adopt ALJ Scollo's findings of fact (except those which apply to the RFAs); reject the determination that a violation of the Act requires intent; and adopt the legal conclusion that Respondent Mucci did not violate *N.J.S.A. 18A:12-24(b)* and/or *N.J.S.A. 18A:12-24(c)* in Count 1; and to adopt the legal conclusion that Respondent Hirschfeld did not violate *N.J.S.A. 18A:12-24(b)* and/or *N.J.S.A. 18A:12-24(c)* in Count 2.

II. Initial Decision (On Remand)

In his *Initial Decision (On Remand)*, ALJ Scollo noted his review was limited to answering two questions:

- (1) whether, without the statements in the RFAs being admitted, there are sufficient facts to support a finding that Respondent Mucci violated *N.J.S.A. 18A:12-24(b)* and/or *N.J.S.A. 18A:12-24(c)* in Count 1, and/or that Respondent Hirschfeld violated *N.J.S.A. 18A:12-24(b)* and/or *N.J.S.A. 18A:12-24(c)* in Count 2; and
- (2) whether, without requiring a demonstration of intent, there are sufficient facts to support a finding that Respondent Mucci violated *N.J.S.A. 18A: 12-24(b)* and/or *N.J.S.A. 18A: 12-24(c)* in Count 1, and/or Respondent Hirschfeld violated *N.J.S.A. 18A: 12-24(b)* and/or *N.J.S.A. 18A: 12-24(c)* in Count 2.

Id. at 5-6.

Based on the parties' submissions, which are supported by references to documents, depositions, and Certifications, ALJ Scollo indicated that it did "not appear the parties are in disagreement about the" following summary of facts:

- Complainant alleged that Respondent Mucci and Respondent Hirschfeld participated in Board matters despite having conflicts of interest, namely that each Respondent had an immediate family member (a child) who was a District student, and a member of the freshman class affected by the subject matter under consideration by the Board.
- The matter under the Board's consideration arose because certain school administrators allowed some freshman students to take AP courses, while other students were not afforded the same opportunity. Consequently, the Board undertook the tasks of learning how the freshman students were allowed to enroll in the AP courses, addressing how to undo or remediate the inequities (inequities referred to as "transcript advantage" and "GPA advantage") which were created by the

administrators' actions, and considering how to rectify those inequities without harming the students who the administrators allowed to enroll in the AP courses, and considering how to prevent such inequities in the future.

- Complainant asserted that because Respondent Mucci has a child who was a freshman at the time, Respondent Mucci violated *N.J.S.A.* 18A:12-24(b) and *N.J.S.A.* 18A:12-24(c) when she attended a December 4, 2017, meeting of the Program Committee (a Board committee that reviewed and made changes to the Program of Studies); attended a January 9, 2018, Board meeting, and several subsequent Board meetings where she supplied information and guidance to the Board as it worked on how to rectify the problems of transcript and GPA advantage, which were created by certain administrators' failure to follow its own Program of Studies.
- Complainant further asserted Respondent Hirschfeld violated *N.J.S.A.* 18A:12-24(b) and *N.J.S.A.* 18A:12-24(c) when he participated in several Board meetings and ultimately voted on the Board's plan for resolving the issues under consideration while his child was also a member of the freshman class.
- ALJ Scollo provides a background similar to the one noted in the "Procedural History" above and additionally notes, most of the Board members recused themselves from participating in the planned meetings and discussions regarding the inequities, but subsequently, Board counsel advised that the Board invoke the Doctrine of Necessity, which allowed the conflicted Board members to participate and vote.
- According to ALJ Scollo, the "essence of the accusation" is that Respondent Hirschfeld failed to recuse himself and participated in Board discussions and voting concerning the inequities problems; and Respondent Mucci involved herself in the Board's decision-making process, she raised the GPA and transcript advantage issue, and that she conducted research into the reasons for, and the extent of students being admitted into AP courses outside of the limitations set forth in the Program of Studies; and as to Respondents Hirschfeld and Mucci, the question is whether their activities could have created a justifiable impression among the public that the public's trust was being violated, i.e., that their participation and activities could be reasonably perceived as securing unwarranted privileges or advantages for their respective children, or could be reasonably perceived as creating some benefit to themselves or to their respective children by depriving other students from earning AP credit. ALJ Scollo maintains that it is asserted that the unwarranted benefit or advantage for Respondents' children would have been the prevention of other students from enhancing their GPAs and transcripts, thus hindering them from outperforming Respondents children.

Id. at 6-8.

ALJ Scollo also found that five (5) facts are established by the Commission's Statement of Facts, and an additional eleven (11) facts are established by Respondent Mucci's and Respondent Hirschfeld's Statement of Facts. *Id.* at 9-13.

Turning to the first issue on remand, namely the RFAs, ALJ Scollo preliminarily reviewed and analyzed the applicable discovery rules to “explain why [he] reached the conclusion that the statements (matters) set forth in the RFAs were admitted.” Following his reanalysis of a decision already rejected by the Commission, ALJ Scollo maintains, “My September 9, 2020, *Initial Decision* regarding the [Commission’s] admissions was fully in accordance with the Administrative Rules and Court Rules and, as further analyzed herein, was correct.” Nonetheless, ALJ Scollo additionally found, “none of the matters admitted therein were probative of whether [Respondent] Mucci or [Respondent] Hirschfeld secured an unwarranted privilege or advantage for their respective children or created some benefit to their respective children.” As such, “the matters admitted in response to the [RFAs] do not affect the outcome of this matter.” *Id.* at 14-25.

Regarding the second issue on remand, specifically intent, ALJ Scollo maintains that, as stated in his *Initial Decision*, and even though the Commission previously rejected this conclusion and directed him to reconsider the finding of a non-violation without regard to intent, “in order to prove a violation of either *N.J.S.A.* 18A:12-24(b) or *N.J.S.A.* 18A:12-24(c), it is necessary to prove that the public servant ... intended to act in his or her official capacity to secure a privilege or an advantage for his/her child or to create some benefit to himself/herself or to a family member.” *Id.* at 25-28. After justifying his position, but without any reference to the intent of Respondent Mucci and/or Respondent Hirschfeld, ALJ Scollo found there is nothing in facts #1-16 that suggest any action taken by either Respondent could reasonably be suspected of violating *N.J.S.A.* 18A:12-24(b) or *N.J.S.A.* 18A:12-24(c) or of violating the public trust. *Id.* at 27-35.

ALJ Scollo additionally found: “the student records are not available for public inspection, so any suspicion that [Respondents] were acting in order to bring unwarranted privileges or advantages to their children or were acting to create any benefit for their children would only be based on supposition, gossip, or other unreliable resources”; in this case, “there can be no fact-based suspicion that ... Respondents were acting in a way to secure an unwarranted privilege or advantage for their respective children or to create some benefit for their respective children”; and “there is no way that a reasonable member of the public could acquire the information (student records) with which to make a rational inference that any type of favoritism was taking place.” *Id.* at 35.

In the “Applicable Law” section of his decision, ALJ Scollo states that the Commission’s main argument is that conflicted Board members (which included Respondent Hirschfeld) and Respondent Mucci’s “participation in the process of addressing and rectifying the Mountain Lakes High School administrator’s actions could have given reasonable members of the public the impression that the [Board] and [Respondent] Mucci were acting in their own self-interests and in the interest of their own children rather than for the good of all students.” *Id.* at 37-38. The Commission’s remaining argument suggests that, due to the numerous conflicts, the Board should have sought another way to proceed. However, per ALJ Scollo, the Commission did not offer an alternative to invoking the Doctrine of Necessity. *Id.*]

Despite the Commission’s arguments, ALJ Scollo finds that the Commission “did not bring forth any empirical evidence that members of the public ... were forming fact-based, reason-based suspicions that [Respondents]” violated *N.J.S.A.* 18A:12-24(b) or *N.J.S.A.* 18A:12-

24(c). Therefore, ALJ Scollo **concludes** the charges brought under *N.J.S.A.* 18A:12-24(b) and *N.J.S.A.* 18A:12-24(c) against Respondents cannot be sustained; in the absence of any legal support for the proposition that the Board was required to seek intervention by the Department of Education, **concludes** this argument is entirely unsupported and, therefore, speculative; and **orders** that Respondents' respective Motions for Summary Decision are granted, Petitioner's Cross Motion for Summary Decision is denied, and the Complaint is dismissed with prejudice. *Id.* at 38-39.

III. Exceptions

Petitioner's Exceptions

In its Exceptions, filed on May 19, 2022, Petitioner notes the reasons for its filing are because ALJ Scollo "admitted requests for admissions which were not answerable by the Commission and, therefore, properly objected" to, and because ALJ Scollo "implemented the incorrect standard from" *DeNike v. Cupo*, 196 N.J. 502 (2008).

Petitioner contends ALJ Scollo mistakenly invoked *N.J.A.C.* 1:1-1.3(a), "when he held the [RFAs] were admitted based on N.J.R. 4:22." According to Petitioner, ALJ Scollo "erroneously mistakenly went beyond the [Uniform Administrative Procedure Rules (UAPRs)] and admitted [RFAs] despite the Commission's legitimate objections to the requests." Petitioner notes the Commission had "insufficient knowledge to make any of the 15 [RFAs]," and it is more likely that the information would have been known to Respondents, namely Respondent Mucci, Superintendent. Petitioner further contends the Commission "had a legitimate and well supported basis to lodge such objections," because RFAs "must seek facts within the party's knowledge" and "must concern a matter that can be answered by a person to whom the request is directed." In this case, the RFAs related to "what the local Board and District considered or had done." The RFAs "were not directed at the Commission, nor did they relate to any action of the Commission's or facts within the Commission's knowledge." Therefore, Petitioner argues "any and all factual findings" that ALJ Scollo made "through the admissions should be rejected."

Petitioner additionally asserts ALJ Scollo's reliance on *DeNike* was misplaced because he incorrectly concluded that, in order to find a violation, the Commission must "bring forth empirical evidence that members of the public ... were forming fact-based, reason-based suspicions that Respondents were attempting to secure unwarranted advantages for their children." Petitioner argues that is incorrect, and it was because Respondents had "immediate family members who stood to benefit from the decision they made regarding the GPA/AP Inequity Issue." Petitioner notes that Respondents' children were "high achievers" and because the other students were enrolled in the AP courses, Respondents' children did not have the opportunity to be valedictorians; ALJ Scollo also failed to note that if it were not for the students enrolled in the AP courses, Respondent Hirschfeld's child would have had the highest GPA. Therefore, it is "reasonable for a member of the public to perceive [Respondent Hirschfeld's] participation and vote regarding the GPA/AP Inequity Issue as an effort to secure unwarranted privileges for his [child]" in violation of *N.J.S.A.* 18A:12-24(b), and his "role as father could reasonably be expected to impair his objectivity and independence of judgment as a board member" in violation of *N.J.S.A.* 18A:12-24(c). Furthermore, the ALJ's reliance on the invocation of the Doctrine of Necessity is in error because it was not necessary to invoke the

Doctrine since there were eight other Board members who were able to vote; Respondent Hirschfeld's vote was not necessary; and ALJ Scollo "failed to state" why Respondent Hirschfeld's vote was necessary or how his actions did not violate the Act.

As to Respondent Mucci, her "personal relationship might reasonably be expected to impair her objectivity and independence of judgment in violation of *N.J.S.A.* 18A:12-24(c)." Petitioner notes, in previous years, students were allowed to take AP courses, and it was not until Respondent Mucci's child became a freshman that she "raised the GPA/AP Inequity Issue." In addition, and as provided in a statement between Respondents, had one of the students, who was enrolled in the AP course been allowed to receive the credits for said course, Respondent Mucci's child would have had the second highest GPA. Therefore, a reasonable member of the public may perceive Respondent's Mucci's "direct involvement" in the issue as a violation of *N.J.S.A.* 18A:12-24(c). Petitioner further asserts the ALJ's conclusion that a "reasonable person must be fully-informed of all the facts in order to make a determination as to whether there is an illusion of impropriety must be rejected." According to Petitioner, the Commission should "issue a decision," which concludes that "a reasonable person could [] have perceived that" Respondents, "based on their children's high achievements, violated the Act by taking action to remove Freshman from AP classes."

With the above in mind, Petitioner argues "the ALJ's decision was legally and factually erroneous, and, therefore, [Respondents'] actions violated the Act."

Respondent Mucci's Reply to Petitioner's Exceptions

In her reply to Petitioner's Exceptions filed on May 20, 2022, Respondent Mucci maintains she "had little concern for who would have enough "GPA advantage" to become valedictorian or salutatorian," and was only concerned with the "'transcript advantage' that prejudiced a significant portion of the student body." Respondent Mucci further notes that the "students who were improperly enrolled in these AP courses had an unfair advantage over many others who were as qualified or even more so but were not given the same opportunity."

Respondent Mucci asserts that a "party opposing summary decision cannot make an issue contested merely by declaring it so. He must produce evidence showing that a genuine issue of material facts exists." Respondent Mucci further asserts the "Commission's review of a summary decision by an ALJ should be guided by the same standard that applies when the Appellate Division reviews an appeal from the grant or denial of summary judgment in the Superior Court."

According to Respondent Mucci, the "gist of the complaint here is that [Respondent] Mucci exerted her influence as Superintendent to secure an 'unwarranted' academic advantage for her [child]" in violation of *N.J.S.A.* 18A:12-24(b) and *N.J.S.A.* 18A:12-24(c); however, Respondent Mucci argues, "there was no competent evidence in the summary decision record to support it and it is squarely refuted by the undisputed evidence in the prehearing discovery record." Respondent Mucci asserts "school officials with children of their own in the district where they serve routinely make decisions affecting their own children's school experience." Therefore, the "evidence must prove that their actions were intended to affect their own children so specifically and exclusively that any benefit was 'unwarranted.'" According to Respondent

Mucci, she and the Board “set about righting this wrong [AP/GPA Inequity Issue] ... There is not a scintilla of evidence that [Respondent] Mucci’s actions were motivated by a desire to benefit her [child], and compelling evidence to the contrary.” Respondent Mucci maintains that although her child was a “high performing freshman who may have been just as qualified to take AP courses” as the other students, the issue is whether Respondent Mucci’s involvement “conferred a ‘privilege’ or ‘advantage’” on her child and if she did, whether it was “unwarranted” and the answer is no, she did not. Furthermore, the record clearly demonstrates that Respondent Mucci’s participation as a “technical resource was essential for the Board members to conduct their deliberations.” Respondent Mucci notes even if there was a conflict, the Commission allows for a “‘technical resource’ exception for conflicted administrators whose expertise is required for the Board to function.”

Respondent Mucci contends Petitioner did not demonstrate that Respondent Mucci’s child was “given an ‘unwarranted’ advantage by her actions.” As to the RFAs, Petitioner’s argument focuses “on the ALJ’s treatment of the responses to [Respondents’] [RFAs] and entirely ignores the responses to our interrogatories.” Respondent Mucci argues because Complainant “bears the burden of proving its case through competent evidence, it was enough that the [C]omplainant was unable to produce any competent evidence to support the requisite elements of its case or to *refute* any of the facts [Respondents] asserted through the sworn statements before the ALJ.” Respondent Mucci further argues “the issue here isn’t whether the ALJ’s reasoning was correct but, by a *de novo* review standard whether the underlying motion record warrants the entry of summary decision dismissing the [C]omplaint” and “it clearly does.”

Respondent Mucci continues, “regardless of [Respondent] Mucci’s intent or how her actions may have appeared to others, there is not a scintilla of evidence in the motion record to establish any ‘benefit,’ much less an ‘unwarranted’ one, could have been conferred on [Respondent] Mucci or her [child].” Respondent Mucci maintains, without such evidence it does not matter “what her intent was, or how her actions may have appeared to others.” Furthermore, Complainant did not challenge that Respondent Mucci was the only administrator who could have provided technical information. Respondent asserts although Petitioner has relied upon “how a reasonable observer might view a school official’s conduct,” “there must have been some showing that the underlying facts were known to the public, or at least, were matters of public record prompting reasonable suspicion” and that is not the case here, because student records are confidential. According to Respondent Mucci “[a]nything any member of the public thought they knew about [Respondent] Mucci’s [child’s] academic standing could have come only from uninformed scuttlebutt or an unlawful breach of [the child’s] privacy.”

Respondent maintains that the Petitioner “suggest[s] that a superintendent with a child enrolled in the same district is guilty of an ethics violation whenever she takes any action whatsoever that potentially benefitting [(sic)] her child.” However, Respondent Mucci’s “actions here were designed to address an inequity affecting a broad swath of the student body, not just her [child]” and, therefore, an unwarranted benefit does not exist. Furthermore, “even if [C]omplainant could establish that a conflict existed,” Complainant did not provide any evidence to “refute” Respondents’ or other witnesses’ testimonies.

Respondent asserts ALJ Scollo’s decision is correct, Petitioner “failed to present any competent evidence to refute” any testimonies, and the “reasonable observer standard” is

“insufficient to warrant a finding of unethical conduct.” Therefore, Respondent Mucci argues she is “entitled to summary decision dismissing the complaint.”

Although Respondent Mucci filed a reply to Petitioner’s Exceptions, she did not file her own Exceptions to the *Initial Decision (On Remand)*.

Respondent Hirschfeld’s Reply to Petitioner’s Exceptions

Respondent Hirschfeld did not file a reply to Petitioner’s Exceptions, or otherwise file his own Exceptions to the *Initial Decision (On Remand)*.

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.*

In addition, and relevant here, *N.J.A.C.* 1:1-18.7(a) permits an agency to “enter an order remanding a contested case to the Office of Administrative Law for further action on issues or arguments not previously raised or incompletely considered.” Following remand, “[t]he judge shall hear the remanded matter and render an initial decision.” *N.J.A.C.* 1:1-18.7(b).

For the reasons more specifically detailed in the Commission’s January 26, 2021, *Remand Decision*, which are specifically incorporated and reaffirmed herein; because the *Remand Decision* specifically directed ALJ Scollo to reconsider his determination of a non-violation *without regard* to the RFAs; because, by reanalyzing the RFAs, ALJ Scollo exceeded the scope of the Commission’s January 26, 2021, *Remand Decision*, and because the final determination in his March 22, 2022, *Initial Decision (On Remand)* was made without considering the RFAs, the Commission again **rejects** the determination that the RFAs were properly admitted. Despite this determination, the Commission **adopts** ALJ Scollo’s findings of fact (except those which apply to the RFAs).

Furthermore, and for the reasons more clearly enumerated in the Commission’s January 26, 2021, *Remand Decision*, which are incorporated and restated here; because the *Remand Decision* specifically directed ALJ Scollo to reconsider his determination of a non-violation *without regard* to intent; because, by reexamining the issue of intent, ALJ Scollo exceeded the breadth of the Commission’s January 26, 2021, *Remand Decision*; and because the final determination in his March 22, 2022, *Initial Decision (On Remand)* was made without regard to intent, the Commission again **rejects** the determination that a violation of the Act requires intent. *See also I/M/O Daniel Fishbein*, Ridgewood Board of Education, Bergen County, Docket No. C70-20. Nonetheless, the Commission **adopts** the legal conclusion that Respondent Mucci did not violate *N.J.S.A.* 18A:12-24(b) and/or *N.J.S.A.* 18A:12-24(c) in Count 1, and the legal conclusion that Respondent Hirschfeld did not violate *N.J.S.A.* 18A:12-24(b) and/or *N.J.S.A.* 18A:12-24(c) in Count 2.

Notwithstanding its determination as set forth herein, and constrained by the standard that applies to its review of ALJ Scollo's *Initial Decision (On Remand)*, as well as its jurisdiction concerning the invocation of the Doctrine of Necessity, the Commission notes that, but for Respondent Mucci's status as the then District Superintendent and the administrator in the best position to advise the Board on the way(s) in which to resolve the "GPA/AP Inequity Issues," and the fact that the Board invoked the Doctrine of Necessity so that Respondent Hirschfeld could vote on the matter at issue, a different determination would have been rendered. Although the Commission acknowledges that all Board decisions impact the lives of all District students, including those of Board members, when a particular issue directly relates to and can impact the education of their children (to the exclusion of nearly all other student populations), school officials must always endeavor to act in a way that assures the public that they are working in, and not opposed to, the best interests of all students. Failure to do so can, and will, lead to the filing of an ethics complaint and, under different circumstances, may result in a violation.

V. Decision

As further detailed above, and after review, the Commission **rejects** the determination that the RFAs were properly admitted; **adopts** ALJ Scollo's findings of fact (except those which apply to the RFAs); **rejects** the determination that a violation of the Act requires intent; and **adopts** the legal conclusion that Respondent Mucci did not violate *N.J.S.A. 18A:12-24(b)* and/or *N.J.S.A. 18A:12-24(c)* in Count 1, and the legal conclusion that Respondent Hirschfeld did not violate *N.J.S.A. 18A:12-24(b)* and/or *N.J.S.A. 18A:12-24(c)* in Count 2.

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 C45-18***

Whereas, on or about March 27, 2019, 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, on or about September 9, 2020, the Honorable John P. Scollo, Administrative Law Judge (ALJ Scollo) issued an *Initial Decision* detailing his findings of fact and legal conclusions;

Whereas, on or about January 26, 2021, the Commission remanded the matter for further action and consideration; and

Whereas, on or about March 22, 2022, ALJ Scollo issued an *Initial Decision (On Remand)* detailing findings of fact and legal conclusions; and

Whereas, Petitioner filed Exceptions to the *Initial Decision (On Remand)*, and Respondent Mucci 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 rejecting the determination that the RFAs were properly admitted; adopting ALJ Scollo's findings of fact (except those which apply to the RFAs); rejecting the determination that a violation of the Act requires intent; and adopting the legal conclusion that Respondent Mucci did not violate *N.J.S.A. 18A:12-24(b)* and/or *N.J.S.A. 18A:12-24(c)* in Count 1, and the legal conclusion that Respondent Hirschfeld did not violate *N.J.S.A. 18A:12-24(b)* and/or *N.J.S.A. 18A:12-24(c)* in Count 2.

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