

***Before the School Ethics Commission***  
***Docket No.: C34-18***  
***Decision***

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**Walter L. Fields,**  
***Complainant***

v.

**Stephanie Lawson-Muhammad,**  
**South Orange-Maplewood Board of Education, Essex County,**  
***Respondent***

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**I. Procedural History**

This matter arises from a Complaint that was filed on May 25, 2018, by Walter L. Fields (Complainant), alleging that Stephanie Lawson-Muhammad (Respondent), a member of the South Orange-Maplewood Board of Education (Board), violated the School Ethics Act (Act), *N.J.S.A.* 18A:12-21 *et seq.* The Complaint alleges that Respondent violated *N.J.S.A.* 18A:12-24.1(e) and *N.J.S.A.* 18A:12-24.1(f) of the Code of Ethics for School Board Members (Code).

On May 29, 2018, Complainant filed a supplemental Certification Under Oath, and provided an additional Exhibit, namely a newspaper article entitled, “Lawson-Muhammad should resign.” The next day, May 30, 2018, the Complaint was served on Respondent, via regular and certified mail, notifying her that charges were filed against her with the School Ethics Commission (Commission), and advising that she had twenty (20) days to file a responsive pleading. On July 11, 2018, Respondent filed an Answer to Complaint and Affirmative Defenses (Answer), and also alleged that the Complaint is frivolous. On August 21, 2018, and after initially failing to respond, Complainant filed a Response to the allegation that the Complaint is frivolous.

The parties were notified by correspondence dated August 21, 2018, that this matter would be placed on the Commission’s agenda for its meeting on August 28, 2018. By correspondence dated September 4, 2018, the parties were advised that, at its meeting on August 28, 2018, the Commission voted to find that the Complaint was not frivolous in accordance with the standard set forth in *N.J.A.C.* 6A:28-1.2, and that it declined to impose sanctions pursuant to *N.J.S.A.* 18A:12-29(e). The parties were further advised that, pursuant to *N.J.A.C.* 6A:28-10.8(a), the Commission voted to retain the matter for a plenary hearing on October 30, 2018.

By correspondence dated September 21, 2018, counsel for Respondent requested an adjournment of the hearing scheduled for October 30, 2018, because counsel would be “out of the office on a pre-planned and prepaid vacation.” Although Complainant did not consent to the adjournment, the Commission agreed to reschedule the plenary hearing until November 27, 2018. The parties were further advised that they needed to submit a “Verification of Attendance

form” to the Commission by no later than October 26, 2018, and to provide the Commission “with copies of any and all documents, Exhibits, videos, etc., that are intended to be introduced as evidence at the hearing by no later than November 9, 2018, even if this information has already been provided to the Commission.” Both parties submitted their respective “Verification of Attendance” forms as directed by the Commission. In addition, on November 9, 2018, Respondent submitted the Exhibits (marked as Exhibits 1-7) that she intended to rely upon at the plenary hearing.

In anticipation of the plenary hearing, the Commission sent correspondence dated November 15, 2018, to the parties indicating that, based on the Commission’s review of the pleadings, a number of facts (1-18) appeared not to be in dispute. Therefore, the Commission indicated that it would “accept the...admissions as stipulated unless either party files a written objection, including the basis for his or her objection, ...by no later than Wednesday, November 21, 2018.” This correspondence further advised that, “if Complainant intends to introduce the video of the traffic incident/stop as part of his case, the copy to be introduced at the hearing must be submitted...by no later than November 21, 2018.” In addition, any objections to the video evidence would need to be filed by November 26, 2018.

By correspondence dated November 20, 2018, but not received by the Commission until November 21, 2018, Complainant disputed certain facts from the Commission’s November 15, 2018, correspondence, namely the facts set forth in #8 and #11, and also provided “a flash drive with the video of the incident in question.” On November 26, 2018, Respondent submitted a letter objecting to Complainant’s use of the video evidence that he submitted to the Commission, but did not otherwise object to any of the facts as set forth in the Commission’s correspondence dated November 15, 2018.

## **II. Summary of the Pleadings**

### **A. The Complaint**

Complainant alleged that, during a routine traffic stop on April 27, 2018, and as depicted in a video that he submitted as an Exhibit to his Complaint, Respondent attempted to use her position as a Board member and her political connections to influence the police officer in the discharge of his duties. Complainant alleged that Respondent violated *N.J.S.A. 18A:12-24.1(e)* and *N.J.S.A. 18A:12-24.1(f)* because her “private action,” namely, referencing her Board position/title, using profanity, asking the police officer to call her child’s school, threatening to contact Sheena C. Collum, the Township of South Orange Village (Village) President, and using racially charged language, during a routine traffic stop constituted “private action” that compromised the Board and its relationship with one of the two municipalities that is part of the South Orange-Maplewood School District (District). In addition, by referring to the Village President, Respondent attempted to use her partisan political connections to intimidate the police officer in the discharge of his duties.

## **B. The Answer**

In her Answer, and as more fully detailed below, Respondent admitted to most of the factual allegations in the Complaint, but denied that she attempted to use her position as a Board member to influence the police officer in the discharge of his duties; denied that she attempted to compel the police officer to make a call for her; denied that she attempted to intimidate the police officer; denied that she compromised the Board and its relationship with the Village; and denied that she violated *N.J.S.A.* 18A:12-24.1(e) and *N.J.S.A.* 18A:12-24.1(f).

## **III. Summary of the Record**

At the plenary hearing on November 27, 2018, Complainant appeared *pro se*, and Respondent appeared with counsel.

### **A. Opening Statements**

In his opening statement, Complainant indicated that he filed his Complaint out of specific concern for Respondent's behavior as a publicly elected member of the Board, and out of "a general concern over the conduct of public officials representing themselves as such for the purpose of evading reasonable expectations to comply with the law in the manner expected of a citizen." Audio of Code Hearing (Audio) at 00:08:35.1 Complainant asserted that he was "not alone" in his concerns about Respondent's behavior, and that the Trustees of the Village – the governing body of the municipality that shares [the] school district - "unanimously communicated its concern" about Respondent's treatment of a Village employee (the police officer who initiated the traffic stop) to the Board. Audio at 00:08:53. He also noted that, despite multiple calls for Respondent's resignation, "the Board's failure to take action prompted the filing of [his] complaint" with the Commission. Audio at 00:09:21.

Complainant further stated that it is "not lost upon" him that law enforcement has a "strained relationship" with the African American community, and further noted that he has personally worked on issues of "policing" in the State "dating back to 1990" when, as Political Director of the New Jersey NAACP, he chaired a public hearing on police brutality and also worked with Governor Florio's administration as he crafted the State's first Executive Order on racial profiling. *Audio at 00:09:34.*

Complainant continued, "insomuch as we can acknowledge" the "many tragedies" that have resulted from encounters between law enforcement and African American motorists and pedestrians, "we cannot allow that history to color the facts in this matter, or use those tragedies as a reason to excuse the behavior that betrays building better relationships between the police and the African American community." *Audio at 00:10:12.* Complainant further stated that, "This incident should serve as a cautionary tale not to make generalizations of either police, or motorists, and to acknowledge that some officers are sensitized to patterns of racial bias and

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<sup>1</sup> References to the Audio of the Code Hearing indicate the start time of the cited testimony.

discharge their duties in a thoughtful way, as was the case with the officer in this incident.”  
*Audio at 00:10:30.*

Respondent reserved her opening statement until Complainant finished presenting arguments and evidence in support of his allegations.

#### **IV. Complainant’s Case**

##### **A. Complainant’s Testimony**

Complainant began the presentation of his evidence by showing, over the objection of Respondent, a video of the traffic stop that occurred on April 27, 2018.<sup>2</sup>

After the video evidence was viewed, Complainant testified that the video demonstrates that Respondent violated *N.J.S.A.* 18A12-24.1(e) when she immediately referenced her public position as a member of the Board when the police officer approached her vehicle. Complainant asserted this was Respondent’s first attempt to influence a public employee in the discharge of his duties. He also claimed that Respondent took private action for the purpose of personal gain to sway the police officer and evade receiving a traffic summons, thus compromising the Board, when she inferred that she had a relationship with the Village President (Ms. Collum). Complainant asserted that by referencing Ms. Collum by name (“Sheena”), Respondent’s intention was to warn the police officer that her political connections would overrule the police officer. In addition, Complainant contended that by suggesting she would “call Sheena,” Respondent attempted to intimidate the police officer. Complainant contended that in her third attempt to use her Board membership to her advantage, Respondent asked the police officer to call her child’s school for her personal benefit. Complainant pointed out that the police officer did not attempt to intimidate Respondent, nor did he behave in a way that could be “deemed or construed” as offensive, threatening or disrespectful toward Respondent. Rather, the police officer was “even tempered,” even when Respondent used an expletive when the police officer offered to summon medical care when he thought Respondent might be in emotional distress.  
*Audio at 00:34:49.*

Complainant also testified that, based on the video, Respondent violated *N.J.S.A.* 18A:12-24.1(f) because she sought to use her position as a Board member for her personal gain by attempting to avoid being held accountable for her traffic violation. *Audio at 00:35:03.* Complainant asserted that when the police officer issued Respondent multiple summonses, Respondent suggested that “she could not do what is required of any citizen when ticketed for a traffic violation, which is to go to court to address the matter.” *Audio at 00:35:22.* Complainant maintained that Respondent “invoked” the first name of the Village President, again attempting to use her position to infer, for personal gain, that a political connection would “circumvent” the summonses, even after the police officer made it clear that once a summons was written it could not be revoked by the police officer. *Audio at 00:35:35.* Complainant also asserted that after being issued the summons, Respondent referred to the police officer’s superior as “your skinhead

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<sup>2</sup> Arguments regarding the admissibility of the video evidence are further discussed *infra*.

cop Chief” and suggested she would call the chief of police. *Audio at 00:36:07*. Complainant stated that Respondent’s private action as a citizen compromised the integrity of her elected position and the Board’s relationship with the Village. *Audio at 00:36:25*. Finally, Complainant maintained that it does not matter whether Respondent apologized for her actions, because the record shows that she used her official position to influence a police officer in the discharge of his duties and to evade a summons. *Audio at 00:36:50*.

During cross-examination, Complainant confirmed that he received the video anonymously, and that he did not submit an Open Public Records Act (OPRA) request to receive an official copy. Complainant further explained that he did not file an OPRA request because by the time he received the video, it had already been released to the public by local media. Complainant also acknowledged that he did not verify or authenticate the video, did not know if the video was the complete and full account of what occurred, and did not know whether the video was edited or modified in any way prior to his receipt of the video. Complainant testified that he did not modify the video after he received it. *Audio at 00:54:39*. As for the traffic stop itself, Complainant admitted that he was not present at the traffic stop, never spoke to the police officer, to the Police Chief, to Respondent, or to Ms. Collum. *Audio at 00:055:05*.

The Commission reserved ruling on the admissibility of the video evidence pending receipt of the written submissions of the parties.

#### **B. Respondent’s Oral Motion to Dismiss**

At the conclusion of Complainant’s case, and as permitted by *N.J.A.C. 6A:28-8.1(d)* and *N.J.A.C. 6A:28-10.8(d)*, Respondent made an oral Motion to Dismiss, and argued that the only evidence that was presented, but not yet admitted, was the video that Complainant received from an anonymous source. Respondent also argued that Complainant did not have personal knowledge of the events that occurred on April 27, 2018, and was only familiar with the events because of the video. Respondent further argued that Complainant had not met his burden to prove that her conduct violated *N.J.S.A. 18A:12-24.1(e)* and/or *N.J.S.A. 18A:12-24.1(f)*. Therefore, Respondent requested that the Complaint be dismissed. *Audio at 00:58:37*.

In reply, Complainant argued that he filed the Complaint as a private citizen, which is within his rights, and that the video evidence presented sufficient facts to establish a violation of *N.J.S.A. 18A:12-24.1(e)* and/or *N.J.S.A. 18A:12-24.1(f)*. *Audio at 00:58:55*.

#### **C. Commission’s Decision on the Oral Motion to Dismiss**

In determining whether to grant Respondent’s Motion to Dismiss, the Commission reviewed the factual allegations to determine whether the allegations, evidence, and testimony, together with legitimate inferences therefrom, could sustain a finding that Respondent violated the Act. *New Jersey Court Rule 4:37-2(b)*. Based on its review, and in viewing the facts in the light most favorable to Complainant, the Commission voted to deny the Motion to Dismiss.

## V. Respondent's Case

### A. Opening Statement

In her opening statement, Respondent's counsel indicated that Respondent was not disputing the fact that she was pulled over on April 27, 2018, for a moving violation. However, he stated that Respondent's testimony would reveal that she was experiencing a hectic morning and feeling anxious, her oldest child needed a ride to school and her other child, who was at home, also needed a ride to school and was going to be late for the administration of the State assessment. Respondent's counsel maintained that being pulled over by a police officer is stressful and scary and that during the traffic stop, Respondent's anxiety increased. Counsel indicated that Respondent would testify that she was "fearful based on her real-life experiences" and felt overwhelmed by the entirety of the circumstances. *Audio at 01:02:54*. Counsel also maintained that Respondent would explain that her behavior was "out of character," she issued an apology to the police officer, that she met with the Chief of Police after the incident, and that she is a dedicated Board member, community member, and parent. *Audio at 01:03:18*. Finally, Counsel asserted that when Respondent announced her name and position to the police officer, it was not for privilege or personal gain, but merely because she wanted the police officer to know "that she was a member of the community, she wasn't a threat." *Audio at 01:04:02*. Counsel claimed that Respondent did not seek to use her position as a Board member for her personal gain, nor did she seek to take political partisan action, and she did not take private action that compromised the Board. *Audio at 01:04:30*.

### B. Respondent's Testimony

Respondent testified that she has lived in South Orange since 2011 and has served on the Board for the past five (5) years. She stated she wanted to become a board member because she is a person who is "highly engaged in the community," specifically in education. Respondent added that she built a "twenty plus year" career in the wireless industry and IT consulting. She stated people would not call her "typically anxious," and she has "built a career in an environment as an African American woman in technology where [she] is often the only black woman in the room." *Audio at 01:05:41*.

In recalling the events of April 27, 2018, Respondent stated that her oldest child remembered needing to arrive at school earlier than expected, and that she also needed to drive another child to school to take the State assessment. Having to drop her children off at school, along with the morning traffic, created anxiety for her. Respondent stated she "mindlessly rac[ed] out to get [her] [child] to school," took a different route than usual, and got pulled over. *Audio at 01:09:19*. Respondent also requested that the Commission take into account certain factors to "give context of what had happened in the preceding weeks, that led to the state of mind that [she] was in upon being pulled over." *Audio at 01:09:36*.

Respondent then articulated several negative incidents involving interactions between police officers and people of color which she either observed personally, or saw on social media/the news. One incident involved the son of a good friend (and which tangentially

involved Chief Kroll), another occurred in Philadelphia, one occurred at a golf course, and another occurred while she was traveling by train on business in Connecticut. Regarding this latter incident, Respondent recounted that when she observed a greater than usual police presence on the track platform, she felt anxious and, “in [her] head [she] was like, I have to make sure they don’t think I’m doing anything, and I just need to go to the bathroom...so that I don’t look suspicious.” *Audio at 01:13:20*. Respondent testified that she was “angry with [her]self that [she] felt that way, it just didn’t make sense at all, like I don’t like to feel powerless and scared.” *Audio at 01:14:21*. According to Respondent’s testimony, the negative treatment of people of color by police officers was fresh in her mind at the time she was stopped for speeding on April 27, 2018. *01:39:37*.

Respondent continued with her testimony, recounting that on the morning of April 27, 2018, she was rushing out of her house, experiencing a high level of anxiety because she was trying to get her children to school on time, when she was stopped by the police officer. Respondent stated she has only “been stopped by cops maybe two or three times” and she always bursts into tears. “It may be irrational, but that is my standard reaction to getting pulled [over] by a cop...” *Audio at 01:15:07*. When the police officer approached her on April 27, 2018, Respondent testified she “immediately need to make sure he knows I’m an ok person.... that is when I say, my name is Stephanie Lawson-Muhammad. I’m a member of the school board. I’m a member of this community. I needed him to know that I was not a dangerous person.” *Audio at 01:15:20*. Counsel asked Respondent if she offered that information (name, identification as school board member) to get out of a summons. Respondent replied, “Not at all. I needed to credentialize myself for him, so that he knew I was not some dangerous black woman, and nothing would happen, bad. It was about a bad outcome not a ticket, about some dangerous, violent outcome. Me wanting to ensure that he knew that I was a good person.” *Audio at 01:15:45*.

As for the stop itself, Respondent acknowledged that her child was in the car and because the child was anxious about being late to school, Respondent’s first response to the officer was to ask whether the child could get out and walk. *Audio at 01:16:21*. Respondent testified that she was additionally concerned because her other child, who needed to be on time for school to take the State examination, was waiting for her at home. Respondent admitted that “completely irrationally, [said] [to the police officer] can you call the school? It didn’t make any sense to ask the officer to call the school. I could’ve called the school. I had my phone, but that was what came out of my mouth in that moment.” *Audio at 01:17:13*. When asked if she identified herself to the police officer to receive an advantage or to attempt to get out of a ticket. Respondent stated, “Absolutely not. ... I have no jurisdiction over police, over the town in any way. It was me credentializing myself, as this is who I am.” *Audio at 01:18:02*.

When asked whether she knew why she was being pulled over, Respondent stated, “... I say, even before he tells me I was speeding. I say, I’m sorry if I was speeding. I didn’t know I was speeding.” *Audio at 01:18:39*. As for what was going through her mind during the traffic stop, Respondent replied:

I mean, so the anxiousness for [her child] to get out, the anxiousness to get back, and then my standard tears around...getting pulled over by police. That interaction is clear. I think what confuses people a lot is, then, the swing to my reaction to him when he asked to call an ambulance and how, why that was offensive to me. I didn't need an ambulance. I didn't need to be put on a stretcher. I was overreacting. I was anxious. I just needed someone to say, I'm not gonna hurt you. You're fine. This is just a normal, police stop.

Audio at 01:19:15.

As for the police officer's suggestion of whether she needed an ambulance, she testified that his comment was "insulting" to her. *Audio at 01:20:22.*

Counsel asked Respondent if she told the police officer that she was afraid of cops because they hurt black people, and she replied, "I did, and that's all wrapped around, as I told you, what my Facebook feed looked like that week. You only can, whether it's your Facebook feed, or it's Google search news, as an African American experiencing this, this is the reality. Especially this year. There were incident, after incident, after incident of what happens when black people are just being black people in the world ..."*Audio at 01:20:44.* She further added, "police are called on African Americans very often just for being black and that feed, that constant feed, and then when it goes wrong, is a daily reminder to those of us paying attention to that. That it is not necessarily a safe space out there for African Americans."*Audio at 01:21:46.*

In response to counsel's question regarding whether Respondent asked the police officer to call her child's school, Respondent stated she did ask the police officer to do this, but did so because she (Respondent) wanted the school to know her child was going to be late. *Audio at 01:22:17.*

When asked who "Sheena" is, Respondent replied:

Sheena Collum is our Village President. I've known her since my first, since she ran for office ... She has had, we've had interaction, her expressing support for me and my work on the board and I've interacted with her during her elections. But she's also a person that's very concerned with our community and often asks for feedback of what's going on and so, in the moment of feeling that, in the moment of feeling that, being pulled over and the anxiety that I felt over being pulled over, I said I will call Sheena, right now. I, because, and if he had said he was a Maplewood cop, I would've said, I'm gonna call Vic right now. Because I had anxiety, and that was a bad interaction for me, and that was what came out of my mouth. I did not pick up the phone. I did not call her. But my instinct was, I want to talk to her because I don't like how this feels.

Audio at 01:23:12.

Regarding her references to "Sheena," Respondent continued:

So there were two instances which I said I would call Sheena. First one I said, was largely around me not liking the way this interaction was feeling ... The second time I made the statement, it wasn't just Sheena. It was Sheena and Chief Kroll, and that was largely around the fact that I had not shown a valid insurance ... I'm like well this isn't fair. Why should I have, it, it's right here. Why should I have to go to court... I did not know that there was some law that once you issue a ticket you can't issue it anymore. I now know that. So, without knowing that it's a law, it seemed unfair and I said, I'm gonna contact, I'm gonna call Sheena and we all know the epithet I put in front of the chief's name. But that was me saying I'm calling your leadership cause this isn't fair.

Audio at 01:25:05.

As for her references to the Police Chief as a "skinhead," Respondent testified that, although she had never met Chief Kroll, she, out of "frustration" with the situation and how he (Chief Kroll) treated her friend's child, she "put an epithet in front of his name." *Audio at 01:26:16*. When asked if she referred to Ms. Collum to get out of a ticket or summons, Respondent said no, and instead stated, "it was to express that I felt something was unfair that if someone can show an insurance card, that, why should they have to go to court." *Audio at 01:28:05*. Respondent denied using or attempting to use her position as a Board member to influence the police officer, and denied attempting to use any political or partisan connections to get out of a ticket.

After the traffic stop occurred, Respondent testified that Ms. Collum called her and stated that she (Ms. Collum) "knew that wasn't me and that she couldn't, you know, fathom what I had been going through for that to happen." *Audio at 01:31:16*. Respondent stated they discussed the incident and she expressed her desire to apologize to both the police chief and the police officer. Respondent stated that, Ms. Collum thought it would be best for Respondent to apologize to Chief Kroll because he was "definitely very hurt by my comment and it affected him deeply." *Audio at 01:31:53*. After efforts back and forth for a meeting, Chief Kroll met with Respondent on May 17, 2018. *Audio at 01:35:10*. Respondent apologized to Chief Kroll at this meeting, and then issued a public apology that was released to the media (on the same day) after their meeting. *Audio at 01:25:15*. Respondent also read a verbal statement at the Board's meeting on May 22, 2018. *Exhibit R-2*.

As a final note, Respondent stated:

I had a very bad day on April 27, [2018,] when I was stopped by an officer. My reaction was something that I would never have wanted anyone to see and my own [child] had to see in the car. When [my child] came home, [my child] said mommy you were not nice to that officer, you owe him an apology. And I knew that. I am not proud of what I did that day. I don't try to justify what I did that day, but I'm a black woman in America, with a Facebook feed that lets me know how I am perceived and what risk exists beyond any door. No matter what kind of suit I have on, what kind of letters I have behind my name, what kind of community member that I am. I never would have wanted anything like this

to cause harm either to my community, to my family, to a school district that I volunteer as an elected official to serve.

Audio at 01:45:39.

On cross examination, Respondent testified that she has received a traffic summons in the past, but has never gone to court before. *Audio at 01:48:29*. Respondent also testified that the police officer did not say anything to her that could be deemed a threat; however, she stated, “he had a tattoo of a skull on his arm that when he, and you saw that he had short sleeves, that when he stood with his arms on the window, the skull was in my face and I don’t like skulls. Skulls give me anxiety.” *Audio at 01:49:44*.

When asked by the Commission what about the traffic stop made her uncomfortable, she responded, “I had a police officer standing at my window, who when I was expressing anxiety asked me if he could call an ambulance for me, which I felt was mocking my feelings. ... All I needed to do was be reassured that I was not gonna be hurt. That he was not a cop that hurts black people and that everything was ok, this was a simple traffic stop, take some deep breaths...” *Audio at 02:08:07*. In response to the question about why she said she would “call Sheena” the second time, Respondent stated, “The second time I said it, it was about getting a ticket because I was surprised I was getting two tickets.” *Audio at 02:11:48*. She further added that is when she responded, “That’s not fair, that’s not right. I don’t wanna go to court. That’s why I said I’m gonna call Sheena. Not just Sheena, I said, let’s just be clear, the second time I, I was going to let his leadership know that I felt this was unfair. ... In my head that was perfectly logical to be upset about and I wanted to express that that does not make sense to me and I was upset.” *Audio at 02:12:15*.

### **C. Character Witness – Annemarie Maini (Board Member)**

Ms. Maini, Respondent’s character witness, testified that she is completing her first, three-year term on the Board, and was recently re-elected for a second term. She stated she has served on the Board with Respondent for the past three (3) years, and has observed Respondent on the Board for the past five (5) years. Ms. Maini also testified that she wanted to become a Board member because she is “acutely aware of the disparity of outcomes in [the] district.” *Audio at 02:24:07*. Her children have “suffered some of the similar inequities that have been brought before the Board” and she felt that her educational background (M.B.A., Master’s in Mathematics Education, and Bachelor’s in Mathematics) “could help bridge some of the needs” in the District. *Audio at 02:24:35*. Ms. Maini testified that she knows Respondent personally, as well as through their relationship on the Board, and has served on several committees with her. Ms. Maini stated that although she and Respondent do not always agree, Respondent is “level headed and able to move a body of eight (8) additional people through some very difficult conversations around disparity in student outcomes, supervision of the superintendent and issues in our schools related to race and homework assignments.” *Audio at 02:26:06*. Ms. Maini further testified that Respondent is engaged, passionate, willing to state her opinion, and willing to talk about the difficult conversations. According to Ms. Maini, Respondent “opens up the

conversation for people who may not immediately think about the impact of every child.” *Audio at 02:28:54.*

Complainant did not cross-examine Ms. Maini.

When questioned by the Commission, Ms. Maini was asked if she was pulled over for a traffic violation, would she, in theory, identify herself as a board member, and she responded, as a “white woman” that would not be her first instinct; however, if her children were in the car she might “rattle off” all of the committees and volunteer activities that she was involved in, because she has “personal experience with how children of color are not necessarily treated the same as an old white woman is.” Ms. Maini also testified that as an elected official she takes full responsibility for any actions and comments that she makes in public.

At the conclusion of the parties’ testimony, the Chairperson advised that, in lieu of closing arguments, both parties could file post-hearing submissions by no later than January 11, 2019.

## **VI. Closing Arguments (Written Submissions)**

### **A. Complainant’s Position<sup>3</sup>**

In his closing arguments, Complainant argued that, upon the first verbal exchange between Respondent and the police officer, Respondent admitted that she identified herself as a Board member. Complainant also argued that Respondent did not dispute the facts related to the April 27, 2018, incident. Complainant pointed out that although Respondent tried to dispute the video’s authenticity, Respondent confirmed its accuracy. In this regard, when Respondent was asked by a Commission member if the video accurately portrayed what happened, Respondent replied, “I mean it is the essence of what happened.” *Complainant’s Closing Argument at 3.* Complainant asserts that Respondent did not offer any evidence that the video had been altered in any way nor did Respondent dispute that the video accurately captured the exchange between the police officer and the Respondent.

Furthermore, Complainant stated that Respondent was fully aware of her actions on the date of April 27, 2018, and that they were “counter to the expected conduct of a Board member and public official.” Complainant argued that Respondent’s attempt to insulate herself from accountability based on a “fear” of police officers “due to her gender and race is offensive and a disservice to current efforts to reform police practices.” *Complainant’s Closing Argument at 4.* Complainant also argued that Respondent acknowledged that at the time the police officer pulled her over, she attributed the stop to the fact that she might be speeding. *Complainant’s Closing Argument at 4.*

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<sup>3</sup> The Commission notes that although this submission was due on January 11, 2019, it was not submitted until January 15, 2019.

Complainant pointed out that Respondent acknowledged that she referenced Ms. Collum two (2) times to the police officer. Complainant argued that this was a direct attempt to infer a political connection in order to intimidate or deter the police officer in the discharge of his duties. Complainant noted that although Respondent referenced Ms. Collum by first name, she told the Commission “I wouldn’t call her a friend.” *Complainant’s Closing Argument at 4.* According to Complainant, if Ms. Collum was not a friend, then Respondent’s only purpose in referencing her was to suggest that the Village President would intervene favorably on Respondent’s behalf, by overruling the police officer and “fixing” the situation. Respondent also admitted that she never apologized to the police officer who initiated the traffic stop, and used the excuse that her fear of “tattoos” was the reason why she did not apologize.

Complainant urged that the facts in this case support his contention that Respondent attempted to use her position as a Board member to influence a police officer and evade a traffic summons. Complainant compared this matter to a recent incident that occurred between a Port Authority of New York and New Jersey Commissioner (NYNJPA Commissioner) and Tenafly police officers. *Complainant’s Closing Argument at 5.* In that incident, the NYNJPA Commissioner identified herself by her State title/position to police officers, used profanity, and announced that she was a “friend of the mayor.” The NYNJPA Commissioner was censured by the Port Authority (following her resignation), it was made clear that her behavior was unacceptable, and she was found to have violated the code of ethics that applies to State employees. Complainant requested that the Commission similarly hold Respondent accountable for her behavior. Complainant also argued that Respondent’s “behavior cannot be condoned and set as an example to follow for the children of the district that she has been elected to serve.” *Complainant’s Closing Argument at 6.*

## **B. Respondent’s Position**

In her closing arguments, Respondent reiterated her anxiety about being pulled over and stated, “It cannot be disputed that being stopped and pulled over by a police officer is a stressful and scary experience for the average person. However, for many African Americans, there is the unfortunate, but real, added fear that a police stop may result in the use of force against them.” *Respondent’s Closing Argument at 1.*

Respondent argued that her purpose in introducing herself as a Board member was not to “attain any privilege benefit as a result of her position” nor “an attempt to intimidate the police officer.” Rather, she contended that her behavior was due to her fear of police officers because they “hurt black people.” *Respondent’s Closing Argument at 3.* Respondent also pointed out that although she stated she was going to “call Sheena,” she did not place the call, nor did she attempt to use any partisan political connections to circumvent the issuance of a summons.

According to Respondent, Complainant failed to prove that Respondent’s conduct on April 27, 2018, compromised the Board and/or its relationship with the township. She contended that she acted as a private citizen who was reacting to the stress, anxiety, and fear of being pulled over by a police officer. She argued that the incident did not happen during a Board meeting and the record does not support any allegation that Respondent took any action “beyond the scope” of her duties as a Board member.

Furthermore, Respondent maintained that Complainant failed to prove that Respondent sought to use her position as a Board member for personal gain and that he did not offer any evidence to contradict Respondent's explanation that she identified herself as a board member, and a community member, to avoid the possibility of the traffic stop "resulting in the use of physical force against her." *Respondent's Closing Argument at 2.*

Respondent also disputed Complainant's allegation that she attempted to use her partisan political connections. Although the video indicated that Respondent referred to Ms. Collum twice during the stop, Respondent argued that Complainant did not offer "one scintilla" of evidence that Respondent has any partisan political connection to the Village President. Respondent maintained that during the traffic stop, she was merely expressing her "feeling that it was unfair" that she was receiving a summons for not having an insurance card when, in fact, she could produce proof of same. Moreover, Complainant did not provide any evidence Respondent received a benefit because ultimately, Respondent appeared in court and paid a fine.

Finally, Respondent argued that Complainant failed to prove that her conduct violated *N.J.S.A. 18A:12-24.1(e)* and *N.J.S.A. 18A:12-24.1(f)*. Respondent argues that the reason that she told the police officer her name and identified herself as a Board member, and a member of the community was to let the police officer know that she was not a threat and that she lived in the community, but that she was not trying to receive any benefit. She also contended that her use of profanity and her reference to the police chief as a "skinhead" are not violations of the Act. Therefore, Respondent asserted that Complainant's claims are without merit, and the Complaint should be dismissed.

## **VII. Admissibility of the Video Evidence**

### **A. Summary of the Parties' Arguments and Relevant Testimony at the Code Hearing**

As part of his case, Complainant introduced into evidence a flash drive that he received, anonymously, that contained a video of the incident that occurred on April 27, 2018, involving Respondent. *See Exhibit C-1.* Respondent objected to the admissibility of the video evidence, and argued that Complainant was not present at the scene of the traffic stop; the police officer who initiated the traffic stop was not present at the hearing to testify and be subject to cross-examination; and that there was no way to authenticate the video evidence and/or determine whether it had been modified or edited (either in whole, or in part). Therefore, Respondent argued that the video evidence should not be admitted as evidence.

In response to Respondent's objections, Complainant argued that he sent a copy of the video to Respondent several months prior to the hearing, and that he had submitted the video as evidence with his Complaint. Complainant also stated that the authenticity of the video could "easily be determined" by comparing it to other videos that are posted online. He also indicated he did not alter the video evidence. *Audio at 00:14:43.* Complainant further argued that Respondent did not object to *any* of the statements/facts that the Commission indicated (in

correspondence dated November 15, 2018) were not in dispute, and many of those statements/facts related to Respondent's statements during the traffic stop (as depicted in the video evidence).

Following arguments from both parties about the admissibility of the video evidence, the Chairperson advised that the Commission would reserve its determination on the issue of the admissibility of the video evidence, and would allow the parties to submit arguments in support of their respective positions. Notwithstanding its reservation on the issue of admissibility, the Chairperson advised that Complainant would be permitted to show the video as part of his case.

After the video evidence was viewed, Complainant was subjected to cross-examination, during which time he confirmed that he received the video anonymously; admitted that he did not file an Open Public Records Act (OPRA) request with the Village for an official copy of the video; admitted that he did not receive, or have, verification or authentication for the video; denied knowing whether the video he received was the complete and/or full version of the video; denied knowing whether the video was edited or modified before he received it; denied that he edited or otherwise modified the video after he received it; admitted that he was not present when the April 27, 2018, traffic stop occurred; and denied speaking with Respondent, the police officer who initiated the traffic stop, and/or the Chief of Police. When asked why he did not submit an OPRA request with the Village for an official copy of the video, Complainant testified that by the time he received a copy of it, the video had already been made public by a local newspaper and was already "in the public domain." *Audio at 00:54:46.*

During Respondent's testimony, she was asked if the video evidence introduced by Complainant was an accurate portrayal of the incident that occurred on April 27, 2018, and she replied, "It is the essence of what happened," and that she "can hear [her] voice." *Audio at 01:56:25.* In the course of her testimony, Respondent also indicated that she first viewed the video of the incident "12 hours before the rest of the world saw the video." *Audio at 01:53:53.* In this regard, Respondent testified that a copy of the video was sent to the "Board of Education office" and, before it was released to the public, she "called the...Board office" and asked if she could view the video. *Audio at 02:02:01.* Respondent subsequently went to the Board office and viewed the video privately. As to the video she viewed, Respondent noted that, unlike the video introduced by Complainant, "it had [her child's] face in it, it had [her] license plate, it had no, you know, blurring." *Audio at 02:02:30.*

When asked if, other than the blurring of her license plate and her child's face, the video evidence she viewed at the Board office and the video evidence introduced by Complainant was the same, Respondent stated, "The nature of what I saw today isn't fundamentally different," but she could not attest to whether the videos were the "exact same." *Audio at 02:04:03.*

## **B. Summary of the Parties' Post Code Hearing Submissions**

As directed by the Chairperson, Respondent filed written objections to the admissibility of Exhibit C-1 on December 7, 2018. In her filing, Respondent argued that Exhibit C-1 should be excluded from evidence because Complainant failed to demonstrate that it was an "original"

pursuant to the New Jersey Rules of Evidence 1001(c). *Respondent's Evidentiary Argument at 4.* With regard to a video, Respondent argued that, "The normal procedure establishing that a police recording is an 'original' is to have an officer testify about the camera system, the recording system, and the duplication system." *Respondent's Evidentiary Argument at 4.* According to Respondent, C-1 "was not accompanied by any certification or affidavit attesting to the authenticity of the video recording," and without the police officer who initiated the stop, "Complainant is unable to bear his burden of proving that Exhibit C-1 is authentic and or a copy of the original recording." *Respondent's Evidentiary Argument at 4.* Absent this "vital testimony," Respondent argued that "it is not possible to conclude that Exhibit C-1 is what it purports to be, especially since the complete visual and audio aspects of the exhibit have never been verified by any individual." *Respondent's Evidentiary Argument at 4.* Finally, Respondent argued that Complainant failed to satisfy the five-prong test set forth in *State v. Driver*, 38 N.J. 255 (1962), for establishing the admissibility of a sound recording. *Respondent's Evidentiary Argument at 5.* For these reasons, Respondent submits that Exhibit C-1 should be excluded from evidence.

Following receipt of Respondent's objections, Complainant timely filed his post-hearing submission on December 17, 2018. In his filing, Complainant stated that although he obtained a copy of the video through an anonymous source, it "entered the public domain when the Village...Administrator...hand delivered a copy along with a memorandum...to the [P]resident of the ... Board on May 8, 2017." *Complainant's Evidentiary Argument at 1.* Complainant also noted that the video "in dispute was first submitted with the original complaint and made available to the Respondent and the Commission on a flash drive," which was well in advance to the November 27, 2018, hearing. *Complainant's Evidentiary Argument at 1.* According to Complainant, the video was also posted on social media, on a website of a community organization and it was identical to the video used by several news organizations." *Complainant's Evidentiary Argument at 1-2.* Complainant additionally noted that "Respondent has publicly acknowledged the very behavior that is captured on the video." *Complainant's Evidentiary Argument at 2.* Although Respondent indicated she had viewed a version of the video that did not contain blurred images, Complainant pointed out that she did "not dispute the sequence of events captured by any of the video she has viewed." *Complainant's Evidentiary Argument at 2.* Therefore, Complainant argued that the video should be admitted as evidence. *Complainant's Evidentiary Argument at 2.*

### **C. Ruling**

When the Commission retains a matter for a hearing, as in this matter, the hearing "shall be conducted in accordance with the rules of the OAL, N.J.A.C. 1:1." N.J.A.C. 6A:28-28-10.8(b). Rulings on the admissibility of evidence "shall be made to promote fundamental principles of fairness and justice and to aid in the ascertainment of truth." N.J.A.C. 1:1-15.1(b). In addition, the rules of the OAL make it clear that parties "in contested cases shall not be bound by statutory or common law rules of evidence or any formally adopted in the New Jersey Rules of Evidence except as specifically provided in" the OAL's rules. N.J.A.C. 1:1-15.1(c) (emphasis added). It is also noted that, "All relevant evidence is admissible" except as otherwise provided in the OAL's rules. *Id.* However, the trier of fact is permitted to exclude evidence if its probative value is substantially outweighed by the risk that its admission will either necessitate

undue consumption of time, or create substantial danger of undue prejudice or confusion. *N.J.A.C. 1:1-15.1(c)(1)* and *N.J.A.C. 1:1-15.1(c)(2)*.

Applying these standards, the Commission finds that the video evidence is admissible. Although Respondent argues that it should be inadmissible because Complainant failed to authenticate the video, Respondent's argument is undermined by the fact that Respondent admitted that the video introduced by Complainant was "the essence of what happened," and not "fundamentally different" from the video she viewed at the Board office. *Audio at 02:04:03*. At no time during the hearing, or as part of her post-hearing submissions, did Respondent claim that the video she viewed at the Board office was not authenticated nor did she dispute that the video was an accurate representation of the events that transpired on April 27, 2018. Respondent also admitted that the voice on the video is her own. *Audio at 01:56:25*. When asked, Respondent acknowledged that the video is well known to the public, and has been viewed in multiple forums, including on social media (e.g., Facebook) and on/with multiple media outlets. Importantly, at no time during the hearing, nor as part of her post-hearing submissions, did Respondent argue that the actions and/or words on the video were inaccurate or misleading. According to Respondent, the only difference between the video she initially viewed at the Board office and the one introduced by Complainant, was the blurring of her license plate and her child's face.

It is also important to note that, in her Answer, Respondent admitted to nearly all of the statements uttered on the video introduced by Complainant. More specifically, Respondent admitted that (1) she was stopped by a Village police officer for a moving violation; (2) she asked the police officer if her child could exit her vehicle to walk to school; (3) she apologized to the police officer for speeding; (4) she identified herself by name, as a member of the Board, and as a community member; (5) when the police officer stated, "OK, ma'am, I'll just try to get you out of here as quickly as I can, OK?," she replied, "And, I'm scared of cops because you guys hurt Black people"; (6) when the police officer asked Respondent if she wanted him to call an ambulance, she replied, "No, I don't want you to call me an ambulance!"; (7) after the police officer advised he was a South Orange police officer, she stated that she would make a call "right now"; (8) and when the police officer advised her that he could not void a summons once written, she stated, "Then I'll call [Ms. Collum]" and "your skinhead cop Chief too." *Exhibit C-3 at 1-3*. Therefore, even if the Commission did not admit the video evidence, nearly all of the statements depicted in the video are admitted by Respondent.

Finally, and although Respondent argues that Complainant has failed to satisfy the evidentiary standards in the New Jersey Rules of Evidence, the Commission notes that the OAL's rules specifically provide that the trier of fact is "not...bound by statutory or common law rules of evidence or any formally adopted in the New Jersey Rules of Evidence. *N.J.A.C. 1:1-15.1(c)* (emphasis added). Therefore, the Commission finds that the video evidence introduced by Complainant is admissible.

## VIII. Exhibits

<b>COMPLAINANT'S EXHIBITS</b>		
<b>EXHIBIT NUMBER</b>	<b>DESCRIPTION</b>	<b>PAGES</b>
C-1	Video of the traffic stop on April 27, 2018, involving Respondent	Video File
C-2	Complaint filed with the Commission on May 25, 2018, along with the Memorandum dated May 7, 2018, from the Acting Village Administrator to the Board President	6 pages
C-3	Respondent's Answer to Complaint and Affirmative Defenses (filed July 11, 2018)	8 pages
C-4	Complainant's Response to the Allegation of Frivolous Filing (filed on August 21, 2018)	2 pages

<b>RESPONDENT'S EXHIBITS</b>		
<b>EXHIBIT NUMBER</b>	<b>DESCRIPTION</b>	<b>PAGES</b>
R-1	Statement released to the press by Respondent on May 17, 2018, regarding the incident on April 27, 2018	1 page
R-2	Statement delivered at the Board meeting on May 21, 2018, regarding the incident on April 27, 2018	1 page
R-3	Letter dated May 29, 2018, from "Black parents of Maplewood and South Orange" to the Board	2 pages
R-4	Article entitled, "SOMA Justice Demands Investigation and Rejects Call for Lawson-Muhammad Resignation"	4 pages
R-5	E-mail dated May 30, 2018, from SOMA Justice (and others) to the Board	17 pages
R-6	"Letter: Founding Members of PARES Issue Response to 'Attacks' on Lawson-Muhammad" (dated May 17, 2018)	5 pages
R-7	"Letter: SOMA Justice Demands Investigation & Rejects Call for Lawson-Muhammad Resignation" (dated May 18, 2018)	5 pages

## IX. Findings of Fact

Having considered the testimonial and documentary evidence in this case, the Commission finds the following facts:

1. Respondent is a member of the Board. *C-2 and C-3.*
2. On April 27, 2018, Respondent was stopped by a Village police officer for a moving violation (speeding) as she drove on Maplewood Avenue in the Township of Maplewood. *C-1 at 00:00:50; C-2; C-3 at 1.*
3. At the time of the traffic stop, one of Respondent's children was in the car with her. *C-1; C-2; C-3.*
4. When the police officer initially walked up to Respondent's window, he said, "Hi ma'am." *C-1 at 00:00:55; Audio at 00:21:46.*
5. Respondent then asked the police officer if her child could get out of the car and walk to school. *C-1 at 00:00:57; C-3 at 1; Audio at 00:21:48.*
6. Before the police officer could respond, Respondent identified herself by name, as a member of the Board, and as a community member. Respondent also said, "I'm sorry if I was speeding." *C-1 at 00:01:03; C-3 at 1; Audio at 00:21:54.*
7. The police officer confirmed that Respondent was speeding, and explained that was why he stopped her. *C-1 at 00:01:05; C-3 at 1; Audio at 00:21:56.*
8. Respondent replied that she did not realize she was speeding. *C-1 at 00:01:07; Audio at 00:21:58.*
9. The police officer advised Respondent that she was "doing 37 in a 25." *C-1 at 00:01:08; Audio at 00:21:59.*
10. Respondent then said, "I'm very sorry." *C-1 at 00:01:09; Audio at 00:22:00.*
11. The police officer proceeded to ask Respondent if she had her driver's license, registration, and insurance card. *C-1 at 00:01:10; Audio at 00:22:01.*
12. Respondent replied that she had all of the requested documentation, and again asked the police officer if her child could get out of the car and walk to school. *C-1 at 00:01:13; Audio at 00:22:02.*
13. The police officer responded, "Sure, that's no problem." *C-1 at 00:01:14; Audio at 00:22:05.*
14. Respondent then said she has another child at home and that child is going to be late for school. *C-1 at 00:01:23; Audio at 00:22:12.*
15. The police officer responded, "Ok, ma'am, I'll just try to get you out of here as quickly as I can, OK?" *C-1 at 00:01:26; Audio at 00:22:18.*

16. Respondent replied, “And I’m scared of cops because you guys hurt Black people.” Respondent then told her child to get out of the car. *C-1 at 00:01:32; C-3 at 1-2; Audio at 00:22:23.*

17. The police officer then said, “Ma’am, do you want me to call you an ambulance?” *C-1 at 00:01:42; C-3 at 2; Audio at 00:22:34.*

18. Respondent replied, “No, I don’t want you to call me an ambulance!” Respondent added, “That was an insult.” *C-1 at 00:01:43; C-3 at 2; Audio at 00:22:35.*

19. The police officer then said, “You look like you might be having a panic attack or some anxiety.” *C-1 at 00:01:48; Audio at 00:22:39.*

20. Respondent replied, “No, I don’t want you to call me an ambulance,” and the police officer responded, “Ok, no problem.” *C-1 at 00:01:50; Audio at 00:22:41.*

21. The police officer then asked Respondent if she could provide him with her driver’s license, registration, and insurance, to which Respondent replied, “that was a fucking insult.” *C-1 at 00:01:53; Audio at 00:22:45.*

22. As Respondent’s child exited the vehicle, Respondent asked the police officer if he could call the middle school to let the school know her child will be late, and the police officer responded, “No, I cannot.” *C-1 at 00:02:15; Audio at 00:23:11.*

23. Respondent initially was unable to locate her driver’s license, and asked the police officer if he could look up her driver’s license. He replied, “so you’re telling me that you don’t have your driver’s license?” *C-1 at 00:02:43; Audio at 00:23:35.*

24. Respondent said, “I’m telling you I don’t see my driver’s license.” The police officer then asked Respondent for her insurance card. *C-1 at 00:02:48; Audio at 00:23:41.*

25. While Respondent looked for her insurance card, she asked the police officer if he is a “Maplewood cop,” and he responded, “No ma’am, South Orange.” Respondent then said, “Great, I’m gonna call Sheena right now.” *C-1 at 00:02:5; C-3 at 2; Audio at 00:23:47.*

26. Respondent handed the police officer an expired insurance card, and he asked Respondent if she had a new one. *C-1 at 00:03:01; Audio at 00:23:54.*

27. Respondent then said, “I don’t see the new one. I’m freaked out right now.” The police officer replied, “Ok, just sit tight for me, ok.” *C-1 at 00:03:10; Audio at 00:24:02.*

28. The police officer then returned to his vehicle. *C-1 at 00:03:12; Audio at 00:24:07.*

29. As the police officer was sitting in his vehicle, Respondent waved her driver’s license out of her window. *C-1 at 00:05:05; Audio at 00:28:08.*

30. The police officer exited his vehicle, and re-approached Respondent's vehicle with summonses in his hand. *C-1 at 00:08:03; C-3 at 2; Audio at 00:28:50.*

31. While at Respondent's window, the police officer said, "You can just put that back in the car ma'am," and "I saw it while you were hanging it out the window. You didn't need to keep your arm out the window the entire time." Respondent then replied, "I wanted you to know that I had my driver's license." *C-1 at 00:08:13; Audio at 00:29:03.*

32. The police officer then asked Respondent, "Are you sure you're ok to drive ma'am?" to which she replied, "I'm ok to drive." Respondent then told the police officer that her other child was at home, had assessments that day, and needed to get to school. *C-1 at 00:08:22; Audio at 00:29:13.*

33. The police officer then said, "I'll get this done as quick as possible, ok ma'am." He then handed Respondent her driver's license, registration card, and expired insurance card. The police officer then advised Respondent that he wrote her a summons for speeding, and a summons for failure to have a valid insurance card in her possession. The police officer then explained that the summons for not having a valid insurance card in her possession was a mandatory court appearance. He told her that at the court appearance, they will verify whether she had valid insurance at the date and time she was stopped. *C-1 at 00:08:30; Audio at 00:29:20.*

34. As the police officer explained the summonses to Respondent, she stated that her husband could send her current and valid insurance card. The police officer then replied, "The ticket has already been written ma'am." *C-1 at 00:08:57; Audio at 00:29:48.*

35. As the police officer explained the procedure for resolving the summonses, she responded, "That doesn't make any sense!" Respondent then added, "For me to have to go to court," "Now, you want me to go to court," and "I don't want to go to court" because "I have insurance." *C-1 at 00:09:03; C-3 at 2; Audio at 00:29:53.*

36. The police officer explained that because the ticket had already been written, he could not void it. Respondent then replied, "Then I'll call Sheena." The police officer stated, "That's fine," and Respondent added, "and your skinhead cop Chief too." *C-1 at 00:09:12; C-3 at 3; Audio at 00:30:03.*

37. The police officer then explained to Respondent what to do if she was unable to attend court on the date scheduled, and concluded the stop by telling Respondent to drive safe. *C-1 at 00:09:32; Audio at 00:30:15.*

38. After the incident occurred, Complainant received a copy of the audiovisual recording of the incident from an anonymous source. *Audio at 00:53:50.*

39. Complainant never requested a copy of the video through an OPRA request. *Audio at 00:54:00.*

40. Respondent apologized to Chief Kroll, in-person, several days after the April 27, 2018, traffic stop. *Audio at 01:03:41 and 01:35:08.*

41. Respondent never apologized, in-person, to the police officer who initiated the traffic stop. *Audio at 02:15:19; Exhibit R-1; and Exhibit R-2.*

42. On May 7, 2018, the Village's Acting Administrator sent a Confidential Communication to the Board President regarding the incident that occurred on April 27, 2018, and it stated, "The Village has great concerns regarding [Respondent's] response to a routine traffic stop for speeding." *Exhibit C-2.*

43. On May 17, 2018, Respondent issued a written statement regarding the incident that occurred on April 27, 2018. *Exhibit R-1.*

44. On May 21, 2018, Respondent read a written statement at the Board meeting regarding the incident that occurred on April 27, 2018. *Exhibit R-2.*

## **X. Legal Analysis**

In his Complaint, Complainant alleges that Respondent violated *N.J.S.A. 18A:12-24.1(e)* and *N.J.S.A. 18A:12-24.1(f)*. These provisions of the Code provide:

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

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

Pursuant to *N.J.A.C. 6A:28-6.4(a)*, and because the Complaint only involves alleged violations of the Code, *Complainant* has the burden to factually establish a violation of *N.J.S.A. 18A:12-24.1(e)* and *N.J.S.A. 18A:12-24.1(f)* in accordance with the standards set forth in *N.J.A.C. 6A:28:6.4(a)(5)* and *N.J.A.C. 6A:28:6.4(a)(6)*.

### **A. Alleged Violation of N.J.S.A. 18A:12-24.1(e)**

Pursuant to *N.J.A.C. 6A:28-6.4(a)(5)*, factual evidence of a violation of *N.J.S.A. 18A:12-24.1(e)* shall include evidence that Respondent made personal promises or took action beyond the scope of her duties such that, by its nature, had the potential to compromise the Board.

Complainant contends that during the first verbal exchange between Respondent and the police officer, Respondent identified herself as a Board member and did so in an attempt to attain an advantage. He further argues that Respondent's repeated reference to the Village President was a direct attempt to infer a political connection in order to intimidate or deter the police officer in the discharge of his duties. Therefore, Complainant argues that these private actions

had the potential to compromise the Board. Respondent counters that she advised the police officer that she was a Board member to “credentialize” herself so that the police officer “knew [Respondent] was not some dangerous black woman and [so] nothing [bad] would happen.” *Audio at 01:15:48*. Respondent further argues that the record does not support any allegation that Respondent took any action beyond the scope of her duties as a Board member, and denies that her actions compromised the Board and/or its relationship with the Village.

In deciding whether Respondent’s actions violated *N.J.S.A.* 18A:12-24.1(e), the Commission considered the credibility of the witnesses. Credibility contemplates an overall assessment of the story of a witness in light of its rationality, internal consistency, and manner in which it “hangs together” with other evidence. *Carbo v. United States*, 314 F.2d 718 (9th Cir. 1963). In addition, a trier of fact may reject testimony because it is inherently incredible, or because it is inconsistent with other testimony or with common experience, or because it is overborne by other testimony. *Congleton v. Pura-Tex Stone Corp.*, 53 N.J. Super. 282, 287 (App. Div. 1958).

Based on its review of the testimonial and documentary evidence, the Commission does not find Respondent’s testimony about why she immediately identified herself as a Board member (i.e., safety concerns) to be credible or convincing. At the time Respondent informed the police officer about her stature as a Board member, the police officer had not done anything, physically or verbally, other than greet Respondent (“Hi, ma’am”). *Audio at 00:21:46*. It is also clear from the video that Respondent was aware that there was a lawful basis for the stop, because after she advised the police officer that she was a Board member and lived in the community, she immediately apologized for speeding (“I’m sorry if I was speeding”). *Audio at 00:21:54*. It is also important to note that, as admitted in her written statement about the incident, Respondent’s reaction was admittedly “irrational,” the police officer never reacted to her behavior, and he “kept an even tone in our interaction and performed his job well under the circumstances.” *Exhibit R-1*. Moreover, Respondent’s mistreatment and beratement of the police officer throughout the traffic stop undermines her testimony that she feared for her safety.

Instead, the Commission finds that when Respondent identified herself as a Board member at the outset of a routine traffic stop, she was attempting to leverage that position to avoid the issuance of a summons. By referencing her position for this purpose, Respondent took private action beyond the scope of her duties that, as detailed below, had the potential to compromise the Board. As there is generally no connection between one’s position as a Board member and a routine traffic stop, Respondent’s near immediate self-identification as a Board member inextricably linked her Board membership to the traffic stop.

In addition, and based on its review of the testimonial and documentary evidence, the Commission does not find Respondent’s testimony about the reasons she referred to Ms. Collum during the traffic stop to be credible or consistent with the evidence. Respondent testified that when she first referred to Ms. Collum it was because she wanted to let her (Ms. Collum) know how she (Respondent) was feeling about the traffic stop, and how she was feeling about the police officer’s suggestion (which Respondent perceived as a “fucking insult”) that she may need an ambulance. Although Respondent initially spoke calmly to the police officer, it was when he

asked Respondent if she wanted an ambulance that her tone completely changed. Respondent was clearly insulted and affronted by the question; however, it was only after she determined (after asking) that the police officer was a South Orange police officer, that she responded, “Great, I’m gonna call Sheena right now.” *Audio at 00:23:47*. Based on the facts and evidence, the Commission finds that Respondent did not refer to Ms. Collum because she wanted to tell her (Ms. Collum) how she was feeling, but rather wanted to impress upon the police officer that she (Respondent) knew and had a relationship with the Village President. Whether the police officer was a South Orange or Maplewood police officer should have been of no consequence to Respondent. Instead, it is clear that Respondent needed to know the answer to this question so that she could then advise the police officer that she knew the appropriate high-ranking official (in this case, Ms. Collum).

Respondent testified that when she next referred to Ms. Collum during the routine traffic stop, which was after she was advised by the police officer that one of the summonses could not be voided because it had already been issued, it was because she wanted to express her (Respondent’s) disagreement with that policy. Once again, the Commission does not find this testimony credible. If respondent truly wanted to share her disagreement with Ms. Collum, it was not necessary for Respondent to inform the police officer that she intended to do so, much less right then and there during the traffic stop. Instead, and based on the facts and evidence, the Commission finds that Respondent referred to Ms. Collum because Respondent wanted the police officer to know that if he would not void the summons, she had a relationship with someone “over him” who could help her to get what he would not give her.

During her testimony, Respondent was asked about the basis of her relationship with Ms. Collum and indicated that she knew Ms. Collum as a “citizen,” that she (Respondent) had “interactions” with Ms. Collum, and that Ms. Collum “expressed support for [Respondent] and her work on the Board.” *Audio at 01:23:13*. Respondent denied that she was “friends” with or otherwise socialized with Ms. Collum, and instead indicated that they talk about “school issues” and “town issues.” *Audio at 02:06:24*. In other words, and based on the nature of her testimony, Respondent’s relationship with Ms. Collum was strictly related to, and stemmed from, her position as a Board member and Ms. Collum’s position as Village President. Citing a relationship with, and connection to, the Village President during a routine traffic stop also constituted private action beyond the scope of Respondent’s duties as a Board member.

By referencing her membership on the Board and *then* citing her relationship to the Village President, a relationship formed as a result of Respondent’s position as a Board member, Respondent acted as if, or made it appear as if, her position and status as a Board member, and the relationships established as a result of that position and status, could be used to exert influence or favor. Respondent’s reference to her position as a Board member and to Ms. Collum suggested that, or made it seem as if, Board members have some special or elevated “standing” in the community and are not held to the same standards as all other citizens. This suggestion, actual or perceived, is clearly compromising to the integrity, character, and reputation of the Board (and its individual members). The fact that the Village’s Board of Trustees felt compelled to send a memorandum to the Board about Respondent’s behavior during the traffic stop on April 27, 2018, underscores the fact that others, including the public, perceived Respondent’s actions as implicating her Board membership and, moreover, viewed her actions as

compromising to the Board. The fact that Ms. Collum personally reached out to Respondent to assist with “damage control” following the traffic stop, the fact that the Acting Village Administrator – on behalf of the Village – sent a “Confidential Communication” to the *Board President* about the Village’s “great concerns” about Respondent’s response to the traffic stop, and the fact that Respondent addressed the issue publicly at a Board meeting, further highlight the perception that Respondent’s actions compromised, or had the potential to compromise, the Board’s integrity, character, and reputation. *Exhibit C-2*.

For the reasons set forth above, the Commission finds that Complainant has proven, by a preponderance of the competent and credible evidence (testimonial and documentary), that Respondent violated *N.J.S.A. 18A:12-24.1(e)*.

**B. Alleged Violation of N.J.S.A. 18A:12-24.1(f)**

As set forth in *N.J.A.C. 6A:28-6.4(a)(6)*, factual evidence of a violation of *N.J.S.A. 18A:12-24.1(f)* shall include evidence that Respondent took action on behalf of, or at the request of, a special interest group or persons organized and voluntarily united in opinion and who adhere to a particular political party or cause; or evidence that Respondent used the schools in order to acquire some benefit for Respondent, a member of her immediate family, or a friend.

Complainant argues that Respondent cited her position as a Board member and relationship to the Village President – which stemmed from her seat on the Board – to attain a benefit for herself, namely the avoidance and/or the issuance of traffic summonses. As indicated above, Respondent testified that she advised the police officer that she was a Board member to “credentialize” herself so that the police officer “knew [Respondent] was not some dangerous black woman and [so] nothing [bad] would happen.” *Audio at 01:15:48*. Although she acknowledges that she referred to Ms. Collum during the traffic stop, Respondent argues she never called Ms. Collum and never used any partisan political connections to circumvent the issuance of a summons. Respondent further denies that she referenced her status as a Board member in an effort to attain any privilege or benefit.

After a review of the testimonial and documentary evidence, and for the reasons set forth more fully above, the Commission does not find Respondent’s testimony about her motivation for identifying herself as a Board member to be credible or convincing. Instead, by identifying herself as a Board member during the initial stages of the traffic stop on April 27, 2018, Respondent implied, or made it appear, that her position and status as a Board member would entitle her to a “free pass” in the course of the traffic stop. The fact that Respondent believed that this information was necessary to “credentialize” herself *before* she actually provided the police officer with her driver’s license, registration card, and/or insurance card, underscores the implication of her words, namely that her standing as a Board member would be of significance to or somehow have an impact on, how the police officer conducted the stop.

In addition, and after a review of the testimonial and documentary evidence, and for the reasons set forth more fully above, the Commission does not find Respondent’s stated reasons for referring to Ms. Collum to be credible. By referencing the Village President two (2) times

during the traffic stop, Respondent implied that her relationship with the Village President, which stems from Respondent's status as a Board member, would be noteworthy to the police officer and influence the outcome of the traffic stop. In this way, the Commission finds that Respondent attempted to leverage her standing as a Board member and the relationship which stemmed from that standing (i.e., with Ms. Collum) to acquire a benefit for herself, namely the ability to avoid the issuance of a traffic summons, and/or to receive more favorable treatment than what other citizens would expect to receive, including the requirement to appear in court for failure to maintain a current and valid insurance card. Whether Respondent actually called Ms. Collum or intended to use her political connections is of no moment, as Respondent's outspoken threat to do so is sufficient. By informing the police officer of her Board membership and her connection to the Village President, Respondent attempted to use the schools for personal gain.

As a result, the Commission finds that Complainant has proven, by a preponderance of the competent and credible evidence (testimonial and documentary), that Respondent violated *N.J.S.A.* 18A:12-24.1(f).

## **XI. Decision**

The Commission finds that Complainant has proven, by a preponderance of the competent and credible evidence (testimonial and documentary), that Respondent violated *N.J.S.A.* 18A:12-24.1(e) and *N.J.S.A.* 18A:12-24.1(f).

## **XII. Penalty**

Having found that Respondent violated *N.J.S.A.* 18A:12-24.1(e) and *N.J.S.A.* 18A:12-24.1(f) for the reasons set forth above, the Commission is authorized to recommend to the Commissioner of Education (Commissioner) an appropriate penalty, which may range from reprimand to removal. *N.J.S.A.* 18A:12-29(c). In its deliberations for the appropriate penalty to recommend to the Commissioner, the Commission discussed the aggravating and mitigating factors adduced in the testimonial and documentary evidence.

As to aggravating factors, the Commission notes that, in addition to unethically invoking her Board position and relationship with Ms. Collum, Respondent repeatedly used offensive and inappropriate language ("that was a fucking insult" and "you guys hurt Black people"), and also admittedly used a racial epithet to describe the Chief of Police ("your skinhead cop Chief"). *Audio at 00:22:45, 00:22:23, and 00:30:03.* Respondent's actions and words, which she admitted were "irrational," were not warranted based on the facts and circumstances of the routine traffic stop. In addition, the use of such language by a sitting Board member, who is charged with advocating for all students, could give the impression that she, and potentially the Board, is biased and/or not impartial. As such, the import of this epithet could cause certain parents to feel as if the Board (and its individual members) cannot, and will not, serve the needs of their children.

The evidence in the record also indicates that, through her words and actions, Respondent attempted to escalate the situation and interfere with a fellow public official who attempted to perform routine duties and responsibilities. When the police officer asked Respondent for her physical credentials, namely her driver's license, registration, and insurance card, Respondent asked if her child could get out of the car and walk to school, and he immediately accommodated her request by stating, "Sure, that's not a problem." *Audio at 00:22:05*. Respondent proceeded to tell the police officer that she had another child at home who was going to be late for school, to which he replied, "Ok, Ma'am, I'll just try to get you out of here as quickly as I can, Ok?" *Audio at 00:22:18*. Seemingly without any reasonable basis, Respondent then stated, "And I'm scared of cops because you guys hurt Black people." *Audio at 00:22:23*. It was this statement and Respondent's physical condition (crying) that prompted the police officer to ask Respondent if she wanted an ambulance, to which she retorted, "No, I don't want you to call me an ambulance!" and "That was an insult." *Audio at 00:22:35*. When the police officer then indicated it appeared as if she was having a panic attack or some anxiety, Respondent abruptly replied, "that was a fucking insult." *Audio at 00:22:45*. As a fellow public official, Respondent should have treated the police officer with the respect and deference that he afforded to her. Even if it could be suggested that Respondent's behavior and language during the traffic stop occurred "in the heat of the moment," it is important to note that there was nearly a five (5) minute "break" in the traffic stop while the police officer was writing the summonses. Importantly, Respondent's second referral to Ms. Collum and the use of racial epithet ("your skinhead cop Chief too") occurred *after* this break. Therefore, Respondent had time to compose herself.

Also in aggravation, although Respondent's testimony intimated that she understood that the racial epithet she admittedly used to describe the Chief of Police was offensive, she failed to recognize how the use of a racial epithet – after referencing her position as a Board member – could also have an impact on the reputation of the Board and its members. In other words, Respondent failed to understand that the use of a racial epithet by a Board member could actually reflect poorly on the character of the Board and its individual members. Although Respondent appeared apologetic for how others would view the Chief of Police based on her comment, she did not appear to recognize that her words could also negatively impact the public's perception of the Board and its members.

Finally, based on the record, it appears that Respondent did not take steps to accept responsibility for her unethical conduct or to make amends to either the police officer or to Chief Kroll until *after* the incident became public. Further, although Respondent apologized, in-person, to Chief Kroll, she never personally apologized to the police officer who initiated the stop. According to Respondent, "in talking to all of the people that were supporting me around this ... it was just probably best from an interaction perspective that that apology be issued the way that I did," meaning as conveyed in her public statement. *Audio at 02:15:25*. However, upon examination of her May 17, 2018, statement, there is nothing that resembles an apology to the police officer. *Exhibit R-1*. Instead, and after commenting on how the police officer conducted himself during the routine traffic stop, Respondent's statement simply thanked him "for his patience." *Exhibit R-1*. Furthermore, in Respondent's May 21, 2018, public statement, which was read at a Board meeting, there is no mention of the police officer who initiated the stop. *Exhibit R-2*. Instead of apologizing to all of the people she may have offended, including the police

officer, Respondent seemed more concerned with apologizing to those people (Chief Kroll) who she was advised to apologize to (by Ms. Collum and others) after the traffic stop occurred.

In mitigation, Respondent has served as a Board member for five (5) years and, according to the record, has never had an ethics charge filed against her with the Commission. *Audio at 01:05:31*. Further, Ms. Maini generally described Respondent and her service on the Board in positive terms.

Although there is no case which is factually analogous to this matter, and this matter is a matter of first impression, the Commission finds three (3) previously issued decisions to be instructive, but not binding, in determining an appropriate penalty. First, in the consolidated matter of *I/M/O Talty and Kight*, Complainant alleged that Respondents “physically and verbally attacked him” at a Board meeting. *I/M/O John Talty and Sharon Kight, Brick Township Board of Education, Docket No. C18-05 and C19-05 (C18/C19-05)*.<sup>4</sup> More specifically, during the public comment portion of the meeting, Complainant and Respondent Talty engaged in a back and forth about the Board’s decision to use district funds to fix a roof, instead of focusing on the recent loss of personnel. *C18/C19-05 at 3*. At the end of public session, and instead of walking into a separate room for executive session, Respondent Kight went into the audience – where she usually speaks with her husband – and “walked up to [Complainant] in an aggressive manner,” and either “pointed her finger at him or pushed him.” *C18/C19-05 at 4-5*. Evidence was also submitted that Respondent Kight told Complainant she would “get him and his organization,” and that Respondent Kight was “so heated that her husband had to pull her away.” *C18/C19-05 at 5*.

The Commission found that Respondent Kight’s actions “were clearly private actions since they occurred during a break in the Board meeting,” and that she was “not acting in her official Board capacity since she was no longer engaged in the Board meeting.” *C18/C19-05 at 4-5*. Moreover, the Commission found that the evidence shows that Respondent Kight “approached [Complainant] in an aggressive manner, screamed at him and threatened him,” and that there was evidence “she made some type of physical contact with [Complainant].” *C18/C19-05 at 5*. Based on the evidence, the Commission held that “such aggressive actions had the potential to compromise the Board because the actions hurt the integrity of the Board and intimidated the public from coming forward and addressing the Board.” *C18/C19-05 at 5*. As a result, the Commission found that Respondent Kight violated *N.J.S.A. 18A:12-24.1(e)* “when she took private action in confronting [Complainant] in a verbal and physical manner regarding his comments during the public comment session,” and recommended that the Commissioner impose a penalty of a two-month suspension. *C18/C19-05 at 5*.<sup>5</sup> The Commission’s recommendation was adopted by the Commissioner.<sup>6</sup>

Although Respondent here did not initiate contact with the police officer, and is not alleged to have made physical contact with the police officer, her verbal abuse of the police officer was far more egregious than the language used by the respondent in *I/M/O Talty and*

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<sup>4</sup> <https://www.state.nj.us/education/legal/ethics/2005/c1819-05v.pdf>.

<sup>5</sup> The allegations against Respondent Talty were dismissed.

<sup>6</sup> <https://www.state.nj.us/education/legal/commissioner/2006/mar/84-06.pdf>.

*Kight*. In addition, not only did Respondent use racially motivated, inappropriate, and offensive language, she also attempted to leverage her position as a Board member and her relationship with the Village President for her own personal gain. In this way, and unlike in *I/M/O Talty and Kight*, Respondent here violated more than one provision of the Code.

Second, in *I/M/O Jan Rubino*, the Commission adopted the Administrative Law Judge's Initial Decision finding that Respondent violated *N.J.S.A.* 18A:12-24(e) when she solicited campaign contributions from school district employees at a time when she was in a position to directly or indirectly affect their employment, violated *N.J.S.A.* 18A:12-24.1(e) because she took private action (sending the e-mail to staff members) that had the potential to compromise the Board, and violated *N.J.S.A.* 18A:12-24.1(f) when she used the school district's e-mail account as a means to solicit donations for her campaign from school district employees. *I/M/O Jan Rubino, Matawan-Aberdeen Regional School District Board of Education, OAL Docket No. EEC-6172-09, SEC Docket No. C16-08 (C16-08)*.<sup>7</sup> As a result of Respondent's actions, the Commission recommended a penalty of a six month suspension, and it was adopted by the Commissioner.<sup>8</sup>

Similar to *C16-08*, Respondent here violated multiple provisions of the Code, namely *N.J.S.A.* 18A:12-24.1(e) when she engaged in private action that had the potential to compromise the Board, and *N.J.S.A.* 18A:12-24.1(f) when she attempted to use her position as a Board member and relationship with the Village President to avoid the issuance of traffic summonses and/or to obtain a relief not accorded to all citizens. Although Respondent here did not also violate a provision in the prohibited acts section of the Act, her inappropriate language and treatment of a fellow public servant, facts which are not at issue in *I/M/O Jan Rubino*, are aggravating factors.

Finally, and in a more recently issued decision, Respondent and another individual were involved in what can most aptly be described as a mutual verbal exchange. *See Hyman v. Davenport*, Docket No. C31-13, *Moore et al. v. Page*, Docket No. C28-13, *Bailey v. Davenport et al.*, Docket No. C41-13, C42-13, C43-13, C44-13, and C45-13 (collectively referred to as *Pleasantville*).<sup>9</sup> After Respondent gave the middle finger to another individual, he (the other individual) responded with an inappropriate statement. *Pleasantville at 3*. Respondent reacted by calling him a racial epithet, and then repeated the epithet a few days later. *Pleasantville at 3*. The Commission recommended that Respondent, who was also found to have engaged in other behavior violative of the Act, be suspended for sixty (60) days, and the recommendation was adopted by the Commissioner.<sup>10</sup> *Pleasantville at 7*.

Unlike in *Pleasantville*, Respondent and the police officer were not involved in a mutual verbal exchange; instead, it was a one-sided attack by Respondent against a law enforcement officer (not a district employee) who, as admitted by Respondent, "performed his job well under

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<sup>7</sup> <https://www.state.nj.us/education/legal/ethics/2009/C16-08.pdf>.

<sup>8</sup> <https://www.state.nj.us/education/legal/commissioner/2010/nov/494-10.pdf>.

<sup>9</sup> <https://www.state.nj.us/education/legal/ethics/2018/C28-13.pdf>.

<sup>10</sup> <https://www.state.nj.us/education/legal/commissioner/2018/apr/113-18SEC.pdf>.

the circumstances.” *Exhibit R-1*. In addition, the Respondent in *Pleasantville* denied giving the individual the middle finger and using a racial epithet but, in this case, there is video evidence that Respondent used a racial epithet and she personally apologized to the Police Chief for admittedly referring to him as a “skinhead.” The use of the racial epithet is compounded by Respondent’s overall conduct during the traffic stop, including her offensive and inappropriate language, her reference to her Board membership, and her repeated reference to the Village President in an attempt to leverage an outcome not afforded to all citizens. Finally, and unlike in *Pleasantville* where Respondent’s actions did not impact anyone other than him, the actions of Respondent here had an impact on and compromised the integrity, character, and reputation of the *entire* Board.

Based on its previously issued decisions, and because the Commission finds that Respondent attempted to misuse her position as a Board member and to leverage her relationship with the Village President during a routine traffic stop for her own personal gain, findings which are compounded by Respondent’s wholly unacceptable conduct, the Commission recommends a **penalty of suspension for six (6) months**. Absent the mitigating factors present in this case (as set forth above), the Commission would have recommended a more severe penalty.

In recommending this penalty, the Commission gave due consideration to Respondent’s testimony as to how she felt during the traffic stop, and her stated mindset based on actual and observed interactions with police officers. However, as a Board member and a public official, Respondent is obligated to conduct herself in a manner that befits the respect and confidence of the people, and she must avoid conduct that violates that public trust or which creates a justifiable impression among the public that such trust is being violated. *N.J.S.A.* 18A:12-21. When she was stopped by the police officer, who is also a public official who was simply trying to perform his duties and responsibilities as a police officer, it was incumbent upon Respondent to act professionally and in a manner that was consistent with the standards to which a Board member must comply. On April 27, 2018, Respondent failed to meet those standards. By referencing her position as a Board member and referring to the Village President during the traffic stop for personal gain and which had the effect of compromising the Board, Respondent violated two provisions of the Act. Although Respondent appropriately acknowledged that she “had a very bad day” on April 27, 2018, and she was “not proud of what [she] did that day,” her behavior had a palpable impact on the community and the Board, and she must be subject to an appropriate penalty. *Audio at 01:45:39*.

The Commission also feels compelled to note that it is disheartened by the Board’s failure to address the incident on April 27, 2018, with the public, especially since the Board President received a “Confidential Communication” from the Village Trustees expressing their “concerns” with Respondent’s actions. Even if the Board determined, in consultation with counsel, that Respondent’s actions were not in her capacity as a Board member – a conclusion which the Commission finds was incorrect – it could have still taken an opportunity to emphasize to the public that Respondent’s actions were inappropriate, were not condoned by the Board, and were not representative of the Board or its individual members. The Board’s failure to take any public action contributed to Complainant’s stated need to file a Complaint with the Commission.

Pursuant to *N.J.S.A.* 18A:12-29(c), this decision shall be forwarded to the Commissioner for review of the Commission's recommended sanctions. Parties may either: 1) file exceptions to the recommended sanctions; 2) file an appeal of the Commission's findings of violations of the Act; or 3) file both exceptions to the recommended sanctions and an appeal of the Commission's findings of violations of the Act.

Parties taking exception to the recommended sanctions of the Commission but *not disputing* the Commission's findings of violations may file, within **thirteen (13) days** from the date the Commission's decision is forwarded to the Commissioner, written exceptions regarding the recommended sanctions to the Commissioner. The forwarding date shall be the mailing date to the parties, as indicated below. Such exceptions must be forwarded to: Commissioner of Education, c/o Bureau of Controversies and Disputes, P.O. Box 500, Trenton, New Jersey 08625, marked "Attention: Comments on Ethics Commission Sanction." A copy of any comments filed must be sent to the Commission and all other parties.

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

Robert W. Bender, Chairperson  
Mailing Date: March 27, 2019

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**Resolution Adopting Decision  
in Connection with C34-18**

**Whereas**, at its meeting on November 27, 2018, the School Ethics Commission (Commission) held a plenary hearing in connection with this matter; and

**Whereas**, at its meetings on January 22, 2019, and March 7, 2019, the Commission considered the Complaint, Answer to Complaint, Exhibits, and Post Hearing Submissions filed in connection with this matter; and

**Whereas**, at its meetings on January 22, 2019, and March 7, 2019, the Commission discussed finding the video evidence admissible; and

**Whereas**, at its meetings on January 22, 2019, and March 7, 2019, the Commission discussed finding that Respondent violated *N.J.S.A.* 18A:12-24.1(e) and *N.J.S.A.* 18A:12-24.1(f); and

**Whereas**, at its meetings on January 22, 2019, and March 7, 2019, and after consideration of the testimonial and documentary evidence, the Commission discussed suspending Respondent for six (6) months; and

**Whereas**, at its meeting on March 26, 2019, the Commission reviewed and voted to approve the within decision as accurately memorializing its actions/findings from its meetings on January 22, 2019, and its special meeting on March 7, 2019; and

**Now Therefore Be It Resolved**, that the Commission hereby adopts the decision and directs its staff to notify all parties to this action of its decision herein.

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Robert W. Bender, Chairperson

I hereby certify that the Resolution was duly adopted by the School Ethics Commission at its meeting on March 26, 2019.

Kathryn A. Whalen, Director  
School Ethics Commission