
Superior Court of New Jersey
Appellate Division

Docket No. A-002006-21T1

ELISABETH SCHWARTZ,	:	ON APPEAL FROM A
	:	FINAL AGENCY DECISION
<i>Complainant-Appellant,</i>	:	OF THE SCHOOL ETHICS
	:	COMMISSION
vs.	:	
	:	DOCKET NO.: C40-21
FAHIM ABEDRABBO,	:	
FERAS AWWAD, CLIFTON	:	
BOARD OF EDUCATION	:	
and PASSAIC COUNTY,	:	
	:	
<i>Respondents-Respondents.</i>	:	
	:	

BRIEF ON BEHALF OF COMPLAINANT-APPELLANT

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Other Authorities:

American Jewish Committee, *Adoption of the Working*
Definition, at [https://www.ajc.org/adoption-of-the-](https://www.ajc.org/adoption-of-the-working-definition)
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Jerusalem Center for Public Affairs, <i>The Fight Against "Pay to Slay,"</i> May 18, 2021, at https://jcpa.org/video/the-fight-against-pay-to-slay/	39
Jewish Virtual Library, <i>Comprehensive Listing of Terrorism Victims in Israel (September 1993 - Present)</i> , at https://www.jewishvirtuallibrary.org/comprehensive-listing-of-terrorism-victims-in-israel#2022	39

Jewish Virtual Library, Mitchell Bard, *The Status of Arabs in Israel*, at <https://www.jewishvirtuallibrary.org/the-status-of-arabs-in-israel> 29

Jewish Virtual Library, Mitchell G. Bard, *Myths & Facts: Online Exclusives, Myth: Israel is engaged in the ethnic cleansing of Palestinians*, at <https://www.jewishvirtuallibrary.org/myths-facts-online-exclusives> 28, 29

Merriam-Webster Dictionary, *Definition of Apartheid*, at <https://www.merriam-webster.com/dictionary/apartheid> 32

Mitchell G. Bard, *Myths and Facts, A Guide to the Arab-Israeli Conflict, Israel's Roots*, <https://www.jewishvirtuallibrary.org/jsource/images/mf2017.pdf#page=9> 33

Steven L. Pomerantz, *I am the Architect of the U.S.-Israel Police Exchange. Don't Believe the Lies*, Jewish Institute for National Security of America (JINSA), June 19, 2020, at <https://jinsa.org/i-am-the-architect-of-the-u-s-israel-police-exchange-dont-believe-the-lies/> 33-34

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Zachary Laub and Kali Robinson, *What is Hamas?* Council on Foreign Relations, at <https://www.cfr.org/backgrounder/what-hamas> 31

PRELIMINARY STATEMENT

This case arises out of the summary dismissal by the School Ethics Commission (the "Commission") of a complaint (as amended, the "Complaint") that Appellant Elisabeth Schwartz filed against two members of the Board of Education ("Board") of the Clifton Public School District ("District"), Respondents Fahim Abedrabbo and Feras Awwad. In her Complaint Ms. Schwartz alleged that Respondents violated the School Ethics Act, N.J.S.A. 18A:12-21 to -34, when they made false and antisemitic statements attacking Israel during the "commissioner comments" portion of the Board's virtual meeting on May 20, 2021.

The Board meeting took place at a time when Israel was at war with Hamas, the U.S.-designated terrorist group that rules Gaza, after Hamas launched thousands of rockets and missiles from Gaza into Israeli towns and cities, deliberately targeting and murdering innocent Israeli civilians. During this most recent conflict with Hamas, antisemitic attacks and violence against Jews surged across the U.S. and around the world. Yet this was precisely the time that Abedrabbo and Awwad chose to use their Board positions to hijack the Board meeting, in derogation of the Board's mission and their duties as Board members. Standing on their Board-provided soapboxes, they attacked Israel publicly, with misleading statements and outright lies that crossed the line into antisemitism. Their conduct potentially compromised the public's trust and confidence in the Board, in violation of N.J.S.A. 18A:12-24.1(e).

Even though the Commission recognized that Abedrabbo's and Awwad's comments at the Board meeting were "offensive" and "hurtful to members of the District's Jewish community," the Commission granted Abedrabbo's and Awwad's motion to dismiss and summarily dismissed Ms. Schwartz's Complaint in its entirety. That summary dismissal is completely and inexplicably inconsistent with the Commission's decisions in other similar cases. In one such case, which the Commission decided shortly before dismissing the Complaint in this matter, the complainant alleged that a school board member violated N.J.S.A. 18A:12-24.1(e) by making comments allegedly offensive to Muslims, not during a board meeting in his role as a board member, but on his personal, private Facebook page. In that case, the Commission denied a motion to dismiss the complainant's claim; after the case proceeded to a hearing, the Commission concluded that the board member violated N.J.S.A. 18A:12.24.1(e) and should be censured. The Commission understood and indeed emphasized the impact that the school board member's comments might have on Muslim students and their families. According to the Commission, members of the Muslim community might fear that their Muslim culture or faith might play a role in adverse decisions by the Board, based on the board member's comments.

The Commission should have reached the same conclusion and for the same reasons in this case against Abedrabbo and Awwad. Their comments were not made privately. Sitting on a virtual dais at a

Board meeting, Abedrabbo and Awwad used their official positions to single out and demonize Israel, and deny Israel's very right to exist. No one on the Board challenged their statements, even though members of the public would have been precluded by District policy from even raising this subject matter. Indeed, as Ms. Schwartz would have shown had the Commission denied the motion to dismiss and allowed this case to proceed to a hearing, their comments were antisemitic, according to an internationally accepted definition of antisemitism. Based on the record before it and based on its prior decisions, the Commission's summary dismissal of the Complaint was arbitrary, capricious and unreasonable. The Complaint sufficiently alleged that Abedrabbo's and Awwad's conduct potentially compromised the public's trust and confidence in the Board, particularly among Jewish students and their families in the District, in violation of N.J.S.A. 18A:12-24.1(e).

At a minimum, the Commission erred in failing to read the Complaint with the liberality and generosity required as a matter of law, and if necessary, allow Ms. Schwartz to amend her allegations that Abedrabbo and Awwad violated the School Ethics Act. Summary dismissal here was an arbitrary and capricious decision and this Court should reverse.

PROCEDURAL HISTORY

Ms. Schwartz appeals the Commission's final decision on January 25, 2022 (10a, 15a), which summarily dismissed her ethics Complaint against Respondents.¹ (1a.)

Ms. Schwartz filed her Complaint on September 13, 2021, alleging that the Respondents violated several provisions of the School Ethics Act - specifically, N.J.S.A. 18A:12-24.1(b); N.J.S.A. 18A:12-24.1(c); N.J.S.A. 18A:12-24.1(e); N.J.S.A. 18A:12-24.1(f) and/or N.J.S.A. 18A:12-24.1(i). (61a.) On October 29, 2021, Abedrabbo and Awwad filed a Motion to Dismiss in Lieu of Answer ("Motion to Dismiss") (91a).² On November 3, 2021, Ms. Schwartz filed a response to the Motion to Dismiss. (155a.)³

By letter dated December 7, 2021, the Commission advised the parties that the matter would be discussed at the Commission's meeting on December 14, 2021, to decide Abedrabbo's and Awwad's

¹ This Brief will reference the facts to the appropriate pages of Ms. Schwartz's Appendix. For example, a reference to page 1 of the Appendix will be abbreviated as 1a, page 2 as 2a, etc. Ms. Schwartz's Complaint can be found at 61a. (Her original complaint is not part of the record.)

² In their Motion to Dismiss, Abedrabbo and Awwad pointedly noted that Ms. Schwartz "is not a resident of Clifton, does not have any children attending school in the District, and is not an employee of the Board" (94a). This is true and irrelevant. N.J.S.A. 6A:28-6.1(a) specifically provides that "*any person* may file a complaint with the Commission alleging a violation of the [School Ethics] Act" (emphasis added).

³ The parties' letter briefs to the Commission are included in the Appendix because they are referred to in the Commission's Decision or the question of whether an issue was raised before the Commission is germane to this appeal. See R. 2:6-1(a)(2).

Motion to Dismiss. (165a.) The meeting took place as scheduled.
(9a.)

At its meeting on January 25, 2022, the Commission reviewed and voted to approve its written Decision on Motion to Dismiss ("Decision"), which memorialized its determination at the December 14 meeting to dismiss the Amended Complaint in its entirety. (9a.) The Commission provided the Decision to the parties on January 25, 2022. (50a.)

STATEMENT OF THE FACTS

Awwad's Anti-Israel and Antisemitic Comments at the May 20, 2021 Board Meeting

On May 20, 2021, the Board held a public meeting virtually, by Zoom. At the start of the "commissioner comments" portion of the meeting, Board President Jim Smith recognized Awwad and gave him the floor. (93a-94a, 145a.)⁴

Awwad prefaced his remarks by stating that he was going to keep his comments "a little short tonight."⁵ Instead, he delivered an approximately five-minute speech about matters completely unrelated to the Board or the District. (61a-65a.) See n.3, supra. At a time of war between Israel and the U.S.-designated terrorist group Hamas in Gaza, and a consequent surge in antisemitism across

⁴ Awwad's comments at the May 20, 2021 Board meeting are viewable in their entirety starting at minute 2:10:27 at <https://www.youtube.com/watch?tv=VkdXZoOaHZA>. (145a.)

⁵ See Awwad's comments at <https://www.youtube.com/watch?tv=VkdXZoOaHZA> at 2:10:40.

the U.S. and around the world,⁶ Awwad launched into an attack against Israel.⁷ (61a-65a.)⁸ His comments included the following:

- That "Israel is being funded [with] \$40 billion of U.S. taxpayer money to oppress people, the Palestinian people";
- That in Gaza, Israel is "building apartheid-style walls, trapping them [the Palestinian Arab people in Gaza], controlling every movement, . . . basically keeping them locked up in a prison," . . . and they're not allowed to move freely within the land";
- That Israel is a "colonialist" and "apartheid" state;
- That, in contrast, "all they [the Palestinian Arabs] want is peace";
- That U.S. police forces "actually go overseas to Israel to learn and to be taught abusive tactics that is [sic] brought

⁶ Ms. Schwartz requests that this Court take judicial notice of these facts, as they are "so universally known that they cannot reasonably be the subject of dispute" and/or they are "specific facts . . . which are capable of immediate determination by resort to sources whose accuracy cannot reasonably be questioned." N.J.R.E. 201(b). See N.J.R.E. 202(b) (authorizing a reviewing court to "take judicial notice of any matter specified in Rule 201, whether or not judicially noticed by the trial court"). See also Duffy v. Armstrong, Docket NO. A-1285-07T1, 2010 N.J. Super. Unpub. LEXIS 734, at *1, *21 (App. Div. Apr. 8, 2010) ("Although a court is generally limited to the contents of the pleadings in deciding a motion to dismiss, it may consider items subject to judicial notice . . .").

⁷ As will be explained more fully in this Brief, Awwad's anti-Israel comments at the Board meeting were false and antisemitic, based on an internationally accepted definition of antisemitism that is used by the U.S. government, more than half of the states in the U.S., and more than 30 other countries around the world.

⁸ See n.3, supra.

back into the urban communities and local communities. . . .
When George Floyd, may he rest in peace, died because an officer decided to put a knee to his neck and suffocate him, that is an Israeli tactic . . .”

- That the U.S. provides \$40 billion to Israel “to oppress others and to teach us to oppress our own.”
- That the U.S. “cut[s] a check to another nation [Israel] to do dirty work.”

(61a-65a, 146a-147a.)⁹ It was not until after he delivered this anti-Israel speech at the Board meeting, and at the prodding of Board counsel, that Awwad stated that these were his personal comments and that he was not speaking on behalf of the Board.

(147a.)¹⁰

Abedrabbo’s Anti-Israel and Antisemitic Comments at the May 20, 2021 Board Meeting

Abedrabbo also delivered lengthy remarks attacking Israel during the “commissioner comments” portion of the meeting.¹¹ (61a-65a.) Identifying himself as Palestinian-American, Abedrabbo expressed gratitude for the rewards he has reaped in this country, and stressed the importance of all children having access to

⁹ See n.3, supra.

¹⁰ See <https://www.youtube.com/watch?tv=VkdXZoOaHZA> at 2:15:56.

¹¹ As will be explained later in this Brief, Abedrabbo’s statements attacking Israel were, like Awwad’s, false and antisemitic.

education. (104a.) Then he, too, made comments completely unrelated to the Board or the District. (103a-106a.)¹²

Abedrabbo accused Israel of "occupation" and "ethnic cleansing." (61a, 103a-106a.)¹³ In addition, he described the humiliation of being "detained" and strip-searched" and "looking down the barrel of a gun" while visiting his Palestinian Arab relatives. (61a, 105a.)¹⁴

Abedrabbo offered his prayers for the children of the West Bank and Gaza. (105a.) Tellingly, he did not pray for the innocent children in Israel who were being deliberately targeted for murder by Hamas in Gaza.

At the conclusion of his remarks and at the prodding of the Board's attorney, Abedrabbo stated that these were his personal comments, and that he was not speaking on the Board's behalf. (107a-108a.)¹⁵

The Board's Silence and Inaction

At the May 20, 2021 Board meeting, not a single other member of the Board spoke up to question Awwad's or Abedrabbo's conduct.

¹²Abedrabbo's comments are viewable in their entirety at minute 2:25:15-2:34:20 at <https://www.youtube.com/watch?tv=VkdXZoOaHZA>. (103a.)

¹³See Abedrabbo's comments at <https://www.youtube.com/watch?tv=VkdXZoOaHZA>, from 2:30:32 - 2:31:13.

¹⁴ See Abedrabbo's comments at <https://www.youtube.com/watch?tv=VkdXZoOaHZA> starting at 2:31:51.

¹⁵ See <https://www.youtube.com/watch?tv=VkdXZoOaHZA> at 2:33:46.

(See 103a, 145a.)¹⁶ No one criticized them, even though Awwad's and Abedrabbo's statements potentially compromised the public's trust in the Board and did in fact cause members of the Jewish community to lose confidence in the Board. (See 103a, 145a.)¹⁷

The Harmful Impact on the People's Trust in the Board

After the May 20, 2021 Board meeting, the Clifton Jewish Community Council sent a letter to the Orthodox community which stated: "We are shocked to learn that at a recent regularly scheduled Clifton Board of Education meeting an elected commissioner decided to voice his antisemitic rhetoric by referencing apartheid, ethnic cleansing and compared justified defense to the killing of George Floyd." (70a.)

At a subsequent Board meeting on August 5, 2021, during the public comments portion of the meeting, one Clifton resident asked the Board, "Am I even welcome here? I mean I'm Jewish so should I even be here? Do I have to denounce my homeland to be here because that's what you're asking me to do? Who else are you asking to do that? None, only the Jews and that's why it's antisemitism." (71a.)

Clifton's police chaplain, and himself a rabbi, told the Board, "I am here to condemn in the first place matters about Israel or what they call Palestine or whatever that have no business at a board of education meeting. It doesn't impact the children."

¹⁶ The Board meeting on May 20, 2021 can be viewed in its entirety at <https://www.youtube.com/watch?tv=VkdXZoOaHZA>.

¹⁷ See n.16, supra.

(71a.) Explaining to the Board that hatred breeds more hatred, the police chaplain informed the Board that a Jewish sixth-grader received disturbing online messages from a classmate believed to be Muslim who threatened to kill her because he hated Jews. (71a.)

The Commission's Decision to Grant the Motion to Dismiss

Based on the record before it, the Commission granted Abedrabbo's and Awwad's Motion to Dismiss in its entirety, stating that Ms. Schwartz "failed to plead sufficient, credible facts to support a finding that Respondents violated N.J.S.A. 18A:12-24.1(b); N.J.S.A. 18A:12-24.1(c); N.J.S.A. 18A:12-24.1(e); N.J.S.A. 18A:12-241(f); and N.J.S.A. 18A:12-24.1(i)." (7a.) The Commission's decision was arbitrary, capricious and unreasonable and should be reversed.

LEGAL ARGUMENT

I. The Applicable Legal Standard

While appellate courts "must defer" to the Commission's "expertise and superior knowledge of a particular field" (Greenwood v. State Police Training Ctr., 127 N.J. 500, 513 (1992)), this Court is not bound by the Commission's interpretation of the School Ethics Act. In re State Bd. of Educ.'s Denial of Petition to Adopt, 422 N.J. Super. 521, 530 (App. Div. 2011); Levine v. State Dep't of Transp., 338 N.J. Super. 28, 32 (App. Div. 2001). The Court must examine the record to ascertain whether the Commission's decision was "arbitrary, capricious or

unreasonable, or that it lacked fair support in the evidence[.]” Dericks v. Schiavoni, No. A-0538-09T1, 2011 N.J. Super. Unpub. LEXIS 1393, at *1, *12 (App. Div. June 1, 2011) (quoting Campbell v. Dep’t of Civil Serv., 39 N.J. 556, 562 (1963)). See also N.J.A.C. 6A:4-4.1(a) (in deciding an appeal to the Commissioner from Commission decisions, the Commissioner “shall not disturb the decision unless appellant has demonstrated . . . the Commission acted in a manner that was arbitrary, capricious, or contrary to law”).

Based on this legal standard, and for two basic reasons explained more fully below, the Commission’s Decision was arbitrary, capricious and unreasonable and should be reversed. First, the Commission erred in concluding that Abedrabbo’s and Awwad’s actions did not potentially compromise the Board in violation of N.J.S.A. 18A:12-24.1(e), particularly given the Commission’s decision in In re Daniel Leonard, Docket Nos. C56-19 and C57-19 (Consolidated) (Sch. Ethics Comm’n Nov. 16, 2021), issued shortly before the Decision here.

Second, the Commission erred in summarily dismissing the Complaint. Instead, the Commission should have construed the Complaint with the liberality and generosity required, to ascertain whether a cognizable claim had been even obscurely set forth, and permitted Ms. Schwartz to pursue her claims, giving her the opportunity to amend her allegations if necessary.

II. The Commission Erred in Dismissing the Allegations that Abedrabbo and Awwad Violated N.J.S.A. 18A:12-24.1(e) (1a)

Ms. Schwartz alleged that Abedrabbo and Awwad took action at the May 20, 2021 Board meeting that had the potential to compromise the Board in violation of N.J.S.A. 18A:12-24.1(e). (65a.) In its Decision, the Commission recognized that Abedrabbo's and Awwad's one-sided anti-Israel comments at the Board meeting were "highly controversial" and "likely perceived as offensive, and hurtful to members of the District's Jewish community." (5a.) But the Commission erred in concluding - without holding a hearing and without any facts to support its conclusion - that the allegations that Abedrabbo and Awwad violated N.J.S.A. 18A:12-24.1(e) should be dismissed because "the comments did not result in any action that could compromise the Board." (6a.) Reaching that conclusion without holding a hearing to develop facts that would support or disprove it, is the essence of arbitrary, capricious and unreasonable action by the Commission.

Moreover, the Commission arbitrarily, capriciously and unreasonably failed to recognize, consistent with its prior determinations, that Abedrabbo's and Awwad's conduct at the Board meeting was itself action that potentially compromised the Board, in violation of N.J.S.A. 18A:12-24.1(e). Its Decision must therefore be reversed.

A. The Commission's Decision Flouts the Objectives of the School Ethics Act to Maintain the People's Confidence and Trust (1a)

The Commission's summary dismissal of Ms. Schwartz's Complaint contravenes the very purpose of the School Ethics Act. In enacting this law, the Legislature made it clear that "it is essential" that the conduct of school board members "hold the respect and confidence of the people." N.J.S.A. 18A:12-22. School board members "must avoid conduct which is in violation of their public trust or which creates a justifiable impression among the public that such trust is being violated." Id. "To ensure and preserve public confidence," the Legislature declared that school board members "should have the benefit of specific standards to guide their conduct." Id.

The School Ethics Act thus includes a Code of Conduct for School Board Members (N.J.S.A. 18A:12-24.1), which provides in pertinent part as follows: "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." N.J.S.A. 18A:12-24.1(e). Abedrabbo and Awwad violated their ethical obligations under this provision of the law.

The meaning of "private action" under the School Ethics Act is "action taken by a board member that is beyond the scope of his authority and duties as a board member." Persi v. Woska, No. A-6038-11, 2013 N.J. Super. Unpub. LEXIS 2915, *1, *14 (App. Div.

Dec. 11, 2013).¹⁸ This interpretation of “private action” is “consistent with several past agency decisions.” Id. (citations omitted). See also Messner v. Gray, No. A-5418-13T3, 2016 N.J. Super. Unpub. LEXIS 703, at *1, *11 (App. Div. Mar. 31, 2016) (where a school board member decided “to further her own, purely private purposes” and potentially compromised the board, court affirmed Commission’s decision that she violated N.J.S.A. 18A:12-24.1(e)).

The record reflects that the Respondents engaged in “private action,” by acting beyond the scope of their authority and duties as Board members to further their own purely private purposes, thereby potentially compromising the Board in violation of N.J.S.A. 18A:12-24.1(e). Awwad delivered a lengthy speech having nothing to do with the Board or the District, accusing Israel of “colonialism” and “apartheid.” He claimed that Israel is “oppressing” the Palestinian Arab people, “trapping” them, “controlling [their] every movement,” and “keeping them locked up in a prison.” He claimed that American police forces go to Israel to learn “abusive tactics” that they bring back to the U.S. Outrageously, Awwad effectively blamed Israel for George Floyd’s

18 In a later appeal in this case, this Court declined to reconsider the “private action” issue, stating that “we found in the prior appeal that the Commissioner [of Education]’s interpretation of ‘private action’ as action taken by a board member that is beyond the scope of his authority and duties as a board member was consistent with the definition of ‘private action’ in N.J.A.C. 6A:28-7.1 [repealed], as well as N.J.A.C. 6A:28-6.4(a)(5) and prior agency decisions.” Persi v. Woska, No. A-3767, 2017 N.J. Super. Unpub. LEXIS 625, at *1, *15 n.11 (App. Div. Mar. 10, 2017).

tragic death, claiming at the May 20, 2021 Board meeting that when a police officer put his knee to Mr. Floyd's neck and suffocated him, "that is an Israeli tactic." He put the blame for Israel's defensive war with Hamas in Gaza solely on Israel, stating that "all they [the Palestinian Arabs] want is peace."

In his own lengthy remarks at the Board meeting, Abedrabbo continued this gratuitous attack on Israel, accusing Israel of "ethnic cleansing." For purely his own purposes and unrelated to any matter concerning the Board or the District, Abedrabbo described the humiliation he felt when he was subjected to Israel's stringent security measures.

Abedrabbo's and Awwad's hateful and offensive comments constituted "private action" that, by themselves, potentially compromised the Board, in violation of N.J.S.A. 18A:12-24.1(e). It was not until after they delivered their gratuitous attacks on Israel, and at the prodding of the Board's attorney, that they both made it crystal clear that they were not speaking on the Board's behalf. By then, the damage was done. Consistent with the School Ethics Act's purpose to ensure that school board members maintain the people's respect and confidence, the Commission should have concluded that the Complaint sufficiently alleged that Abedrabbo and Awwad violated the law. The Commission's summary dismissal of the Complaint instead should be reversed.

B. The Commission's Decision Cannot Be Reconciled with its Decision Censuring a School Board Member for Conduct that Posed Far Less Risk to the Public Trust (1a)

The Commission's Decision is especially problematic, considering the conclusion it reached in In re Leonard, Docket Nos. C56-19 and C57-19 (Consolidated) (Sch. Ethics Comm'n Nov. 23, 2021). In Leonard, the Commission considered whether a school board member violated N.J.S.A. 18A:12-24.1(e) and other provisions of the School Ethics Act when he made public comments that were allegedly offensive to Muslims. See id. at 1-3.

Significantly, the school board member in Leonard did not use his official podium at a school board meeting to deliver his comments, as Abedrabbo and Awwad did here. See id. at 4. He posted his comments on his private personal Facebook page (with a disclaimer that the views expressed were his own and not the board's), where he expected the posts to be viewable by a select number of people only, according to his privacy settings. Id. Yet the Commission did not summarily dismiss the ethics complaint against him, as it did here. Instead, the case proceeded and the Commission ultimately adopted the conclusion of the Administrative Law Judge (ALJ) that the board member violated N.J.S.A. 18A:12-24.1(e) and should be censured. Id. at 5.

In reaching this conclusion, the Commission in Leonard underscored the following language in the ALJ's decision:

[T]he Legislature made "it clear" that "it is essential . . . BOARD members 'must avoid conduct which is in violation of their public trust or which created a

justifiable impression . . . that such trust is being violated. . . . It is appropriate to conclude that conduct creating such an impression has the potential to cause the impairment of the Board or to expose it to discredit or suspicion - in other words, to compromise the Board."

Id.

Again quoting from the ALJ's decision, the Commission in Leonard emphasized that the school board member's social media posts were "clearly an example of conduct that would cause members of the Board to lose the confidence of the people, and . . . creates an unjustifiable impression . . . that such trust is being violated." Id. In particular, the Commission understood the potential harmful impact that the board member's actions had on members of the Muslim community, again quoting the ALJ's conclusions:

"It is not a stretch to consider that students or families of students of Muslim faith may fear that their culture or faith may play a role in adverse decisions by the Board" based on [the school board member]'s "public expression of negative attitudes towards Muslim culture and faith. . . . Furthermore, "they may well be discouraged from even seeking redress to the Board if they feel there is no point."

Id.

It is impossible to reconcile the Commission's decision in Leonard with its Decision here, especially when the facts of the two cases are examined more closely. The facts show that Abedrabbo's and Awwad's conduct posed a greater risk to the public trust than the school board member's conduct in Leonard. Therefore, if the risk in Leonard was sufficient for the Commission

to conclude that the school board member violated N.J.S.A. 18A:12-24.1(e) and should be censured, then surely the Commission's summary dismissal of Ms. Schwartz's Complaint was arbitrary, capricious and unreasonable. At a minimum, the Commission should have permitted this case - with the greater threat to the public trust - to proceed to a hearing, so that Ms. Schwarz could demonstrate that Abedrabbo and Awwad violated the School Ethics Act.

In addition to the fact that the school board member in Leonard made his comments on his personal, private Facebook page - not at an official Board meeting as Abedrabbo and Awwad did here - the school board's responses in the two cases were vastly and significantly different. In Leonard, the school board forcefully responded to the board member's offensive social media posts, making it clear to the public and to the community that the board condemned and rejected his posts. See id. at 3. The board president denounced the posts, rescinded the board member's appointment to a special committee, and encouraged the board member to resign from the board. Id. (He did not resign, but he did not run for reelection and was not even a board member at the time of the ALJ's decision against him.) Id. In addition, in Leonard, the board attorneys issued a letter that condemned the board member's social media posts as "racist, incendiary and offensive," and described the legal process for addressing alleged ethics violations. Id. In short, in Leonard, the board took many steps

to maintain the public's faith and trust, by sending a clear and forceful message that to the board, the board member's comments were deplorable and intolerable.

Not so in the present case. The Board took no such steps to maintain the public's trust and confidence after Abedrabbo and Awwad hijacked a Board meeting to launch an attack on Israel for their own private purposes. Not one Board member spoke up to criticize them for their actions. Not one even questioned or challenged their comments. Not one Board member - or the Board attorney - condemned Abedrabbo or Awwad for abusing their positions on the Board and misusing their official podiums for their personal goals and at the expense of the community members whom they were there to serve. In contrast to the board's vigorous response in Leonard, the Board's silence and inaction in the present case actually served to amplify the negative message that Jewish students and their families had already received from Abedrabbo and Awwad - namely, that their Jewish identity might adversely affect the Board's decision-making, and that they should thus think twice before ever going to the Board for help or redress.

Indeed, a Jewish member of the community made that fear and trepidation clear to the Board at its meeting on August 5, 2021, which followed the meeting at which Abedrabbo and Awwad made their hateful and incendiary comments. During the public comments section of the August 5 meeting, the Jewish community member implored, "Am I even welcome here? I mean I'm Jewish so should I

even be here? Do I have to denounce my homeland to be here because that's what you're asking me to do? Who else are you asking to do that? None, only the Jews and that's why it's antisemitism."

Particularly given its decision in Leonard, a case that presented far less compelling facts than the facts here, the Commission should have concluded that Abedrabbo's and Awwad's conduct could be a violation of N.J.S.A. 18:12-24.1(e), if proven by evidence adduced at a hearing. Its Decision to dismiss the entire Complaint summarily instead was arbitrary, capricious and unreasonable, and should be reversed.

C. The Commission Erred in Effectively Endorsing an "Anything Goes" Policy for Board Members at Board Meetings (1a)

In its Decision, the Commission noted that "the District's existing policy permits Board Members to make personal comments on any matter a Member sees fit so long as a Member makes clear the opinion does not represent that of the Board, which Respondents did here." (4a-5a.) Although not cited in the Decision, the Commission was likely referring to the District's Board Policy No. 0146 - Board Member Authority, which provides:

Board members are entitled to express themselves publicly on any matter, including issues involving the Board and the school district. Individual Board members cannot, however, express the position of the Board except as expressly authorized. . . . A Board member shall not represent his/her personal opinion as that of the Board and shall include in all formal expressions in which his/her Board affiliation is likely to be recognized, such as letters to government officials or newspapers, speeches to organizations, and the like, a

statement that the opinions expressed do not necessarily represent those of the Board.

Board Policy No. 0146 - Board Member Authority.

But as Abedrabbo and Awwad themselves recognized in their Motion to Dismiss, this policy does not mean that "anything goes" when it comes to Board members' comments and statements. There are limitations on Board members' right to express themselves. Abedrabbo and Awwad understand themselves that Board members' comments and statements cannot "violate any provisions of the Code of Ethics for School Board Members, N.J.S.A. 18A:12-24.1 or the School Ethics Act, N.J.S.A. 18A:12-21 et seq." (92a.)

The Commission itself appreciated these limitations on free speech when it decided Leonard, supra, and concluded that a school board member violated N.J.S.A. 18A:12-24.1(e) when he posted allegedly offensive comments on his private, personal Facebook page. In Leonard, the Commission acknowledged that "board members do not surrender the rights that they have as citizens such as freedom of speech when they become members of a school board." Leonard, supra, Docket Nos. C56-19 and C57-19 (Consolidated) (Sch. Ethics Comm'n Nov. 23, 2021) at 6. But, the Commission emphasized, "when a sitting Board member makes such a judgmental proclamation, it is likely to be credited far more than a statement offered by an ordinary citizen." Id.

Likewise, in Saini v. Tufano, Docket No. C48-20 (Sch. Ethics Comm'n Dec. 22, 2020), the Commission considered whether a school board member violated the School Ethics Act (N.J.S.A. 18A:12-

24.1(b), not the provision under discussion here) when he posted allegedly racist, sexist and misogynistic comments on social media. Though it concluded that the board member did not violate this provision of the School Ethics Act, the Commission made it clear that school board members must exercise their First Amendment rights responsibly and without potentially harming the people whom they are there to serve:

Public words which derogate from the mission of a board of education serve no purpose, create unnecessary hostility and animosity within a community, and ultimately have the greatest detrimental impact on the very people the Respondent [school board member] is tasked to serve - the students. Although the Commission acknowledges the sanctity of the First Amendment, *words that deliberately cause divisiveness should have no place in the educational setting.*

Id. at 6 (emphasis added).

In Schleifstein v. McKay, Randolph Township Board of Education, Morris County, Docket No. C40-20 (Sch. Ethics Comm'n Nov. 24, 2020), the Commission considered whether a school board member violated N.J.S.A. 18A:12-24.1(e) when she criticized a group of parents during a virtual board meeting. The Commission dismissed the claim, based on "the critical fact" that the board member's "remarks directly touched upon an issue impacting the Board." Id. at 11. The Commission stated that "there is nothing which prohibits a member of the Board from making remarks, even if of a personal nature, *about matters related to the business of the Board*" Id. (emphasis added). See also Giacomini v. Chiarella,

Docket No. C44-20 (Sch. Ethics Comm'n Dec. 22, 2020) ("As a publicly elected member of the Board, Respondent must always be cognizant of how his words, despite his intent, may be received by *all* of the families and students he serves, even when posted on his personal Facebook page.") (italics in original).

In the present case, Abedrabbo's and Awwad's remarks had nothing to do with the business of the Board. These two Board members purposefully exploited their official podiums at the May 20, 2021 Board meeting for their own personal purposes - and at the expense of the people they were obligated to serve, particularly Jewish students and their families. The Commission erred in failing to consider - as it did in Leonard, where the stakes were lower because the board member's offensive comments were posted on his personal, private Facebook page, not delivered at a board meeting - that Abedrabbo's and Awwad's hateful anti-Israel comments would likely be credited and accepted more than comments coming from "ordinary citizens." Based on the Commission's discussion of board members' free speech rights in Leonard, Saini and Schleifstein, the Commission should have concluded in the present case, that Abedrabbo's and Awwad's First Amendment rights did not mean that "anything goes" at Board meetings. They had no right to misappropriate a Board meeting for their own purposes, when their comments were unrelated to the business of the Board, derogated from the Board's mission, caused

divisiveness, sowed hostility and animosity toward Jews and Israel, and compromised the public trust.

Had Abedrabbo and Awwad been members of the public, there is no question that they would have been prohibited from delivering their hateful anti-Israel remarks, by Board policy. District Policy 0167 - Public Participation in Board Meetings requires the Board to set aside a portion of every public meeting for "public comment *on any school or school district issue* that a member of the public feels may be of concern to the residents of the school district." Id. (emphasis added). The Policy also provides: "All persons receiving permission to address the Board *shall confine their remarks to those matters that properly relate to Board of Education business or which come under the jurisdiction or the authority of the Board.*" Id. (emphasis added).

If members of the public must restrict their comments to Board and District issues, then surely Board members like Abedrabbo and Awwad must do so, too - especially when, as the Commission recognized in Leonard, supra, their statements are likely to be given more credit than the statements of ordinary members of the public. See Leonard, SEC Docket No. C56-19 and C57-19 (Consolidated) at 6.

Abedrabbo and Awwad had no right to hijack the May 20, 2021 Board meeting and use it for their own personal purposes to attack and condemn Israel. They knew or should have known that their comments could diminish the faith and confidence that members of

the community would have in the Board.¹⁹ Their actions potentially compromised the public trust, in violation of N.J.S.A. 18A:12-24.1(e). Based on the record and its prior decisions, the Commission erred in failing to reach this conclusion, after holding a fact-finding hearing. Its Decision here should be reversed.

III. The Commission Erred in Summarily Dismissing the Complaint Instead of Reading it Liberally and Generously and Giving Ms. Schwartz an Opportunity to Amend, If Necessary (1a)

A. A Liberal and Generous Reading of Ms. Schwartz's Complaint was Required (1a)

The Court should reverse the Commission's arbitrary, capricious and unreasonable decision for another reason: Having recognized that the Respondents' comments were "offensive" and "hurtful" to members of the District's Jewish community, the Commission erred in summarily dismissing the Complaint. Instead, the Commission should have construed the Complaint with liberality and generosity, and given Ms. Schwartz the opportunity to amend it if necessary, so that she could make it even clearer that Abedrabbo's and Awwad's actions had the potential to compromise the Board in violation of N.J.S.A. 18A:12-24.1(e).

That was the conclusion that this Court reached in Fisher v. Hamilton, Docket No. A-4441-11T3, 2013 N.J. Super. Unpub. LEXIS 1773 (App. Div. July 17, 2013). In Fisher, the Commission

¹⁹ Indeed, during his long attack on Israel, Awwad expressly acknowledged that his comments might "bother" members of the community. See <https://www.youtube.com/watch?tv=VkdXZoOaHZA> at 2:14:05.

dismissed in its entirety an ethics complaint filed against a member of the Hamilton Township Board of Education, after the school board member allegedly accepted private contact and engaged in private conversation with a candidate for the board's interim superintendent position. Id. at *1.

The Commission determined that the complainant in Fisher had "failed to provide a sufficient factual basis in his [amended] complaint from which the Commission could find that [the school board member's] action was of such a nature that it had the potential to compromise the Board." Id. at *4. The Commission thus dismissed the allegations that the school board member violated N.J.S.A. 18A:12-24.1(e). Id.

This Court reversed the Commission's determination and remanded the case for reinstatement of the complaint. Id. at *12. In reaching this decision, the Court noted the Legislature's purpose in enacting the School Ethics Act. The Act "is not only aimed at preventing the actual violation of the public trust by school board members but also ensuring that board members will avoid conduct 'which creates a justifiable impression among the public that such trust is being violated.'" Id. quoting N.J.S.A. 18A:12-22.

This Court in Fisher also emphasized the importance of reading a complaint's allegations liberally and generously, stating as follows:

[A] reviewing court searches the complaint in depth and with liberality to ascertain whether the fundament of a

cause of action may be gleaned even from an obscure statement of claim, opportunity being given to amend if necessary. At this preliminary stage of the litigation the Court is not concerned with the ability of plaintiffs to prove the allegation contained in the complaint. For purposes of analysis plaintiffs are entitled to every reasonable inference of fact. The examination of a complaint's allegations of fact required by the aforesaid principles should be one that is at once painstaking and undertaken with a generous and hospitable approach.

Id. at *11 (quoting Printing Mart-Morristown v. Sharp Electronics Corp., 116 N.J. 739, 746 (1989)).

These principles resonate here. Having recognized that Abedrabbo's and Awwad's comments attacking Israel at the May 20, 2021 Board meeting were "offensive" and "hurtful" to members of the District's Jewish community, the Commission should have read the Complaint liberally and generously and given Ms. Schwartz the opportunity to prove that their comments potentially compromised the Board in violation of N.J.S.A. 18A:12-24.1(e). At a minimum, the Commission should have given Ms. Schwartz the opportunity to amend her allegations and make that claim clearer.

B. The Commission's Failure to Read the Complaint Liberally Prevented Ms. Schwartz from Showing that Abedrabbo's and Awwad's Comments Were False and Misleading, Potentially Compromising Public Trust in the Board (1a)

Had the Commission given the Complaint the liberal and generous reading it required, Ms. Schwartz would have presented evidence that showed that Abedrabbo's and Awwad's comments were not simply "highly controversial" and "offensive and hurtful to members of

the District's Jewish community." (See 5a.) Their comments were deliberately misleading and outright false in order to paint Israel as evil and oppressive. Moreover, their comments crossed the line into antisemitism, based on an internationally accepted working definition of antisemitism called the International Holocaust Remembrance Alliance (IHRA) working definition of antisemitism. See International Holocaust Remembrance Alliance, *What is Antisemitism? Non-Legally Binding Working Definition of Antisemitism*, at <https://holocaustremembrance.com/resources/working-definitions-charters/working-definition-antisemitism>.

At the May 20, 2021 Board meeting, Abedrabbo converted the podium entrusted to him in his capacity as a Board Member to his own personal use, for his own personal soapbox. Clothed in the authority of the Board, he falsely and irresponsibly accused Israel of "ethnic cleansing." In fact, there is no evidence that Israel has ever sought or intended to destroy any national, ethnic, racial or religious group, including the Palestinian Arab people. After the war in 1948 (when five Arab armies attacked the nascent state of Israel with the intention of destroying it), approximately 150,000 Palestinian Arabs were living in Israel. They were not killed, expelled or "cleansed" from the land. Instead, they became Israeli citizens. See Jewish Virtual Library, Mitchell G. Bard, *Myths & Facts: Online Exclusives, Myth: Israel is engaged in the ethnic cleansing of Palestinians*, at

[https://www.jewishvirtuallibrary.org/myths-facts-online-](https://www.jewishvirtuallibrary.org/myths-facts-online-exclusives)

[exclusives](https://www.jewishvirtuallibrary.org/myths-facts-online-exclusives). Today, approximately two million Palestinian Arabs are citizens of Israel who participate in all aspects of Israeli society with full civil rights. *Id.* Israeli Arab citizens are doctors in Israeli hospitals; lawyers and judges, including Supreme Court justices, in Israel's courts; Ministers in Israel's Parliament (the Knesset), and serve in the Israeli military and police forces.²⁰ So much for ethnic cleansing.²¹

²⁰See Rossella Tercatin, 'We are Family': Jewish and Arab Medical Staff Respond to Ethnic Tensions, *Jerusalem Post*, May 13, 2021, at <https://www.jpost.com/arab-israeli-conflict/we-are-family-jewish-and-arab-medical-staff-respond-to-ethnic-tensions-668120>. Approximately 9% of all judges in Israel are Israeli Arabs; 4% are Arab women. See Jewish Virtual Library, Mitchell Bard, *The Status of Arabs in Israel*, at <https://www.jewishvirtuallibrary.org/the-status-of-arabs-in-israel>. In 2022, a Muslim judge was appointed to Israel's Supreme Court; he is not the first Israeli Arab to serve on the Supreme Court. *Id.* Arabs hold 10 seats in the Knesset, and the Ra'am party is an Arab party that is part of Israel's coalition government. *Id.* Although Arab citizens of Israel are not required to serve in the Israel Defense Forces (in order to spare them from having to take up arms against their brethren), the IDF has, over the past few years, seen a record number of Israeli Arabs volunteering to serve. See Yoav Zitun, *IDF Sees Record Number of Israeli Arab Conscripts*, *YnetNews*, Jan. 3, 2021, at <https://www.ynetnews.com/article/rJVONmyCP>.

²¹ Indeed, if Israel intended to ethnically cleanse its Arab population, it would have to be the most inept ethnic cleanser in history, given the exponential growth of its Arab population. See Jewish Virtual Library, Mitchell G. Bard, *Myths & Facts: Online Exclusives, Myth: Israel is engaged in the ethnic cleansing of Palestinians*, at <https://www.jewishvirtuallibrary.org/myths-facts-online-exclusives>. This is also true in Judea and Samaria (commonly referred to as the West Bank) and Gaza; under Israel's alleged policy of ethnic cleansing, the Arab population increased (from 1967 to the present) by nearly 2.3 million in Judea and Samaria, and by 1.6 million in Gaza. *Id.* However, because

When Abedrabbo went on to misuse his podium at the May 20, 2021 Board meeting to describe the humiliation he felt when he was detained and strip-searched when visiting his Palestinian Arab relatives, he deliberately omitted crucial factual context. Israel has been forced to take inconvenient and sometimes unpleasant security measures to protect innocent civilians from Arab terrorism aimed at Israeli citizens, Jews and non-Jews alike. We in the U.S. also must submit to the inconvenience of heightened security in our airports, theaters and many other buildings to minimize the threat of terrorism. If there were no terrorism, then these security measures would not be necessary or implemented.

As Ms. Schwartz would have shown had the Commission read her Complaint with the generosity and liberality required, Awwad also abused his official podium at the May 20, 2021 Board meeting, and made comments that potentially compromised the public's trust in the Board. He accused Israel of "oppressing," "trapping," "locking up," and restricting every movement of the Palestinian Arab people in Gaza.

Awwad, too, deliberately omitted critical facts in order to demonize Israel. Gazans are not ruled by Israel. They are ruled and controlled by Hamas - a brutal and oppressive dictatorship designated as a terrorist group by the U.S., Canada, the European

antisemitism is impervious to logic and truth, Abedrabbo nevertheless irresponsibly spewed this toxic and obvious falsehood at the May 20, 2021 Board meeting.

Union, the United Kingdom, and more.²² Zachary Laub and Kali Robinson, *What is Hamas?* Council on Foreign Relations, at <https://www.cfr.org/background/what-hamas>. Indeed, since 2005, after Israel unilaterally withdraw from Gaza and uprooted over 8000 Jews who had homes, communities and businesses there, there has not been a single Israeli civilian or soldier in Gaza. See Anti-Defamation League, *Disengagement*, at <https://www.adl.org/resources/glossary-terms/disengagement>. In singularly focusing on demonizing Israel, Awwad also omitted crucial context: that Hamas, by its charter, is committed to the destruction of Israel and the murder of every Jew. See The Avalon Project, Yale Law School, *Hamas Covenant 1988, The Covenant of the Islamic Resistance Movement*, Aug. 18, 1988, at https://avalon.law.yale.edu/20th_century/hamas.asp.

Awwad went further at the May 20, 2021 Board meeting, falsely accusing Israel of "apartheid." As noted above, though Israel is the nation-state of the Jewish people, Arabs, Christians, Muslims,

²²See U.S. Department of State, Bureau of Counterterrorism, *Foreign Terrorist Organizations*, at <https://www.state.gov/foreign-terrorist-organizations/> (Hamas designated on 10/8/1997); Government of Canada, Public Safety Canada, *Currently Listed Terrorist Entities*, at <https://www.publicsafety.gc.ca/cnt/ntnl-scrt/cntr-trrrsm/lstd-ntts/crrnt-lstd-ntts-en.aspx> (Hamas listed 11/27/2002); Molly Quell, Courthouse News Service, *Top EU Court Returns Hamas to Terror List After 3-Year Break*, Nov. 23, 2021, at <https://www.courthousenews.com/top-eu-court-returns-hamas-to-terror-list-after-3-year-absence/>; Gov.UK, *Proscribed Terrorist Groups or Organisations*, updated Nov. 26, 2021, at <https://www.gov.uk/government/publications/proscribed-terror-groups-or-organisations--2/proscribed-terrorist-groups-or-organisations-accessible-version>.

Baha'i and other non-Jews are also citizens of Israel. Jews and non-Jews serve in the Knesset and on the judiciary and work side-by-side in Israel's hospitals, universities and businesses. See n.20, supra. The Arab political party Ra-am is a part of Israel's coalition government.²³ As Awwad knew or should have known, apartheid is "a former policy of segregation and political, social and economic discrimination against the nonwhite majority in the Republic of South Africa." Merriam-Webster Dictionary, *Definition of Apartheid*, at <https://www.merriam-webster.com/dictionary/apartheid>. For him to accuse Israel of apartheid is utter nonsense, and to do it at an official Board meeting potentially compromised the public trust in the Board, which Ms. Schwartz would have shown.

In his approximately five-minute attack on Israel at the Board meeting, Awwad also accused Israel of being a "colonialist" state - another lie that reflected Awwad's personal view that Jews are interlopers in the land of Israel and that the Jewish state of Israel has no right to exist. In fact, as thousands of years of history and archeology demonstrate, Jews are indigenous to the land of Israel, going back close to four thousand years. See

²³ Indeed, Mansour Abbas, the leader of the Ra'am party, has rejected the claim that Israel is an apartheid state. Tovah Lazaroff, *MK Mansour Abbas: Israel is not an Apartheid State*, Jerusalem Post, Feb. 12, 2022, at <https://www.jpost.com/israel-news/politics-and-diplomacy/article-696212>. So has the U.S. government. See *US Rejects Human Rights Watch's Accusation of Israeli 'Apartheid'*, Times of Israel, Apr. 29, 2021, at <https://www.timesofisrael.com/us-rejects-human-rights-watches-accusation-of-israeli-apartheid/>.

Mitchell G. Bard, *Myths and Facts, A Guide to the Arab-Israeli Conflict, Israel's Roots*, <https://www.jewishvirtuallibrary.org/jsource/images/mf2017.pdf#page=9>, at pp. 1-4. See also Ryan Bellerose, *Are Jews Indigenous to the Land of Israel?* Tablet, Feb. 8, 2017, at <https://www.tabletmag.com/sections/israel-middle-east/articles/bellerose-aboriginal-people>; Bari Weiss, *The Story Behind a 2,600-Year-Old Seal*, New York Times, Mar. 30, 2019, at <https://www.nytimes.com/2019/03/30/opinion/sunday/bible-josiah-david-seal.html>.

Perhaps most egregiously, Awwad used his official podium at the May 20, 2021 Board meeting to accuse Israel of complicity in the murder of Black people. He claimed that American police forces go to Israel and learn "abusive tactics" that are brought back to "urban communities" in the U.S. He even blamed Israel for George Floyd's tragic death, stating at the Board meeting that when a police officer "decided to put a knee to his [Mr. Floyd's] neck and suffocate him, that is an Israeli tactic."

Awwad's incendiary comments were false. In fact, U.S. law enforcement personnel do not receive training from Israeli law enforcement on arrest mechanics or holds. They learn about how Israeli law enforcement deters, disrupts and responds to terrorist attacks, with which Israel unfortunately has had long experience. Steven L. Pomerantz, *I am the Architect of the U.S.-Israel Police Exchange. Don't Believe the Lies*, Jewish Institute for National

Security of America (JINSA), June 19, 2020, at <https://jinsa.org/i-am-the-architect-of-the-u-s-israel-police-exchange-dont-believe-the-lies/>. Yet in breach of his obligations to the people in the District, Awwad deliberately promoted this incendiary falsehood, encouraging hatred of Israel and Jews, and compromising the public trust in the Board.

C. The Commission's Failure to Read the Complaint Liberally Prevented Ms. Schwartz from Showing that Abedrabbo's and Awwad's Comments Were Antisemitic, Potentially Compromising Public Trust in the Board (1a)

Abedrabbo and Awwad's anti-Israel comments at the May 20, 2021 Board meeting were not only false and misleading, deliberately omitting crucial context in order to portray Israel as an evil oppressor. Their comments also crossed the line into antisemitism, based on the widely accepted IHRA working definition of antisemitism.

The IHRA is an intergovernmental organization comprised of governments (over 35 countries around the world are members) and experts committed to combating Holocaust denial and antisemitism. See International Holocaust Remembrance Alliance, *About Us*, at <https://www.holocaustremembrance.com/about-us>. In 2016, the IHRA adopted a non-legally binding working definition of antisemitism. It includes a core description of antisemitism as "a certain perception of Jews, which may be expressed as hatred toward Jews." See International Holocaust Remembrance Alliance, *The Working Definition of Antisemitism*, supra, at

<https://holocaustremembrance.com/resources/working-definitions-charters/working-definition-antisemitism>.

Importantly, the IHRA definition also includes the following contemporary examples of antisemitism:

- Calling for, aiding, or justifying the killing or harming of Jews in the name of a radical ideology or an extremist view of religion.
- Making mendacious, dehumanizing, demonizing, or stereotypical allegations about Jews as such or the power of Jews as collective – such as, especially but not exclusively, the myth about a world Jewish conspiracy or of Jews controlling the media, economy, government or other societal institutions.
- Accusing Jews as a people of being responsible for real or imagined wrongdoing committed by a single Jewish person or group, or even for acts committed by non-Jews.
- Denying the fact, scope, mechanisms (e.g. gas chambers) or intentionality of the genocide of the Jewish people at the hands of National Socialist Germany and its supporters and accomplices during World War II (the Holocaust).
- Accusing the Jews as a people, or Israel as a state, of inventing or exaggerating the Holocaust.
- Accusing Jewish citizens of being more loyal to Israel, or to the alleged priorities of Jews worldwide, than to the interests of their own nations.

- Denying the Jewish people their right to self-determination, e.g., by claiming that the existence of a State of Israel is a racist endeavor.
- Applying double standards by requiring of it a behavior not expected or demanded of any other democratic nation.
- Using the symbols and images associated with classic antisemitism (e.g., claims of Jews killing Jesus or blood libel) to characterize Israel or Israelis.
- Drawing comparisons of contemporary Israeli policy to that of the Nazis.
- Holding Jews collectively responsible for actions of the state of Israel.

Id.

The IHRA definition does not speak in absolutes. It expressly notes that in considering these contemporary examples, context is crucial. See id. In addition, the definition makes it clear that “criticism of Israel similar to that leveled against any other country cannot be regarded as antisemitic.” Id.

The IHRA working definition of antisemitism has gained wide acceptance throughout the world, including by the U.S. government,²⁴ and for good reason: The definition reflects the

²⁴ In 2019, President Donald Trump issued an Executive Order on Combating Anti-Semitism, which required, *inter alia*, that all executive departments and agencies charged with enforcing Title VI of the Civil Rights Act consider the IHRA definition, including the contemporary examples of antisemitism it identifies. Exec. Order No. 13899, 84 Fed. Reg. 68779 (Dec. 11, 2019), at <https://www.federalregister.gov/documents/2019/12/16/2019->

actual experience of members of the Jewish community, and it provides an accurate and comprehensive framework for understanding how antisemitism is expressed today, including relating to Israel.

Had the Commission read the Complaint liberally and generously as required, and permitted Ms. Schwartz to pursue her claims, Ms. Schwartz would have shown that Abedrabbo's and Awwad's comments at the May 20, 2021 Board meeting fell squarely within the widely-accepted IHRA definition of antisemitism. In addition, Ms. Schwartz would have shown how their antisemitic comments potentially compromised the trust and confidence that Jewish

[27217/combating-anti-semitism](https://jewishinsider.com/2021/03/tony-blinken-biden-ihra-definition-antisemitism/). U.S. Secretary of State Antony Blinken confirmed that the Biden administration "enthusiastically embraces" the IHRA definition, including the examples of antisemitism that relate to Israel. See Melissa Weiss, *Biden Admin 'Enthusiastically Embraces' Full IHRA Definition of Antisemitism*, Jewish Insider, Mar. 1, 2021, at <https://jewishinsider.com/2021/03/tony-blinken-biden-ihra-definition-antisemitism/>. Approximately 30 other countries have already adopted the definition. American Jewish Committee, *Adoption of the Working Definition*, at <https://www.ajc.org/adoption-of-the-working-definition>. More than half of the states in the U.S. have adopted the definition, too (see *Nebraska Becomes 27th State to Adopt IHRA Definition of Anti-Semitism*, Jewish News Syndicate, May 9, 2022, at <https://www.jns.org/nebraska-becomes-27th-state-to-adopt-ihra-definition-of-anti-semitism/>), as have cities and counties across the country. See American Jewish Committee, *Use of the Working Definition in the U.S.*, at <https://www.ajc.org/use-of-the-working-definition-in-the-us>. In October 2020, the Global Imams Council, comprised of Muslim religious leaders from all denominations, adopted the IHRA definition of antisemitism. Sarah Chemla, *Global Imams Council Adopts IHRA Definition of Antisemitism*, Jerusalem Post, Oct. 30, 2020, at <https://www.jpost.com/diaspora/antisemitism/worlds-largest-imams-ngo-adopts-ihra-definition-of-antisemitism-647515>.

students and their families were entitled to have in the Board, in violation of the School Ethics Act.

Using his official podium at a Board meeting, Awwad singled out and demonized Israel, falsely accusing the Jewish state of "oppressing," "trapping," "locking up," and restricting every movement of the Palestinian Arab people in Gaza. He singled out and demonized the Jewish state by falsely accusing Israel - the only flourishing democracy in the Middle East, where Jews and non-Jews participate in all aspects of society - of "apartheid." He also claimed that Israel is a "colonialist" state, thereby denying Israel's right to exist and the Jewish people's right to self-determination. And disgracefully, he blamed Israel for wrongdoing committed by others, namely, the "abusive tactics" of U.S. police officers and the actions of the officer which led to George Floyd's tragic death. Awwad's comments - targeting and demonizing not individual Jews but rather the Jewish state of Israel - were antisemitic, based on the internationally accepted IHRA working definition of antisemitism.

The same is true for Abedrabbo's abhorrent comments at the May 20, 2021 Board meeting. He, too, demonized Israel with falsehoods, accusing Israel of "ethnic cleansing." Deliberately omitting the crucial context that would explain why Israel must employ stringent security measures, Abedrabbo used his official podium to demonize Israel, describing the humiliation he felt when he was visiting his Palestinian Arab relatives and was detained by Israeli soldiers

and strip-searched. Quite deliberately, he never mentioned at the Board meeting that Jews in Israel have faced unrelenting violence and terrorism. See Jewish Virtual Library, *Comprehensive Listing of Terrorism Victims in Israel (September 1993 - Present)*, at <https://www.jewishvirtuallibrary.org/comprehensive-listing-of-terrorism-victims-in-israel#2022>. Arab terrorists deliberately target innocent Israeli civilians²⁵ and actually are rewarded for their crimes.²⁶ As Abedrabbo surely understands but deliberately neglected to mention when he used his official podium to attack Israel at the Board meeting, Israel's security measures may be

²⁵ Israel is currently enduring a wave of terrorism, including a terror attack on May 5, 2022, in the central Israeli city of Elad. In a park that was crowded with people celebrating Israel's Independence Day, two terrorists attacked several people with an axe and a knife. Three people were killed and several others were wounded, three seriously. See Emanuel Fabian and Aaron Boxerman, *3 Killed, 3 Badly Injured in Terrorist Axe Attack in Elad at End of Independence Day*, Times of Israel, May 5, 2022, at <https://www.timesofisrael.com/3-killed-several-injured-in-suspected-terror-attack-in-elad/>. One of the murder victims actually offered a ride to the terrorists and drove them to the scene of the attack, where they rewarded his kindness by hacking him to death. See Jerusalem Post Staff, Aaron Reich, *Elad Victim Unknowingly Offered Ride to Terrorists Only to Be Killed on Arrival*, Jerusalem Post, May 6, 2022, at <https://www.jpost.com/israel-news/article-706023>.

²⁶ The Palestinian Authority, which governs most of the Arabs who live in Judea and Samaria (also known as the West Bank) pays stipends to terrorists and their families; the deadlier the attack, the higher the stipend. See Ariel Kahana, *PA Making Terror Payments to Hundreds of Israeli Citizens*, Jewish News Syndicate, Apr. 14, 2022, at <https://www.jns.org/pa-making-terror-payments-to-hundreds-of-israeli-citizens/>. See also Jerusalem Center for Public Affairs, *The Fight Against "Pay to Slay,"* May 18, 2021, at <https://jcpa.org/video/the-fight-against-pay-to-slay/>.

inconvenient and sometimes unpleasant. But they are a necessity, to save lives.

In his remarks at the May 20, 2021 Board meeting, Abedrabbo meaningfully commented that "children should be taught the truth - not one-sided history." Yet both he and Awwad did precisely the opposite, at the expense of the community they are obligated to serve. They both used their official podiums at the Board meeting to distort the truth, deny history, and promote demonizing lies about Israel that crossed the line into antisemitism.

At a time of surging antisemitism in the U.S. and around the world,²⁷ Abedrabbo's and Awwad's antisemitic anti-Israel comments at the May 20, 2021 Board meeting were particularly irresponsible and reprehensible. As Ms. Schwartz would have shown, had the Commission liberally read her Amended Complaint as required, Abedrabbo's and Awwad's actions potentially caused (and in fact, did cause) a loss of trust and confidence in the Board, in violation of N.J.S.A. 18A:12-24.1(e).

²⁷ Every year, the Anti-Defamation League (ADL) tracks incidents of antisemitic harassment, vandalism and assault in the U.S., and since 1979, has published this information in an Annual Audit of Antisemitic Incidents. In its latest audit, for 2021, the ADL recorded 2,717 antisemitic incidents across the U.S., a 34% increase from 2020 - and a record high since the ADL began tracking antisemitic incidents in 1979. See Anti-Defamation League, *Audit of Antisemitic Incidents 2021*, at <https://www.adl.org/audit2021>. Antisemitic incidents occurred in every state of the U.S., as well as in the District of Columbia. Id. New Jersey had the second highest number of recorded incidents, second only to New York. Id.

The Commission's Decision to dismiss the Amended Complaint was wrong and should be reversed. Based on the record and the law, this Court should determine that the Commission erred in concluding that Ms. Schwartz failed to plead sufficient facts to support a finding that Abedrabbo and Awwad violated the School Ethics Act. At a minimum, the Court should reinstate the Complaint and allow Ms. Schwartz to pursue her claims in further proceedings before the Commission, including by amending her allegations if necessary.

CONCLUSION

For the foregoing reasons, Ms. Schwartz respectfully requests that this Court reverse the Commission's decision to dismiss her Complaint. Contrary to the Commission's conclusion, the Complaint sufficiently alleged that Abedrabbo and Awwad violated N.J.S.A. 18A:12-24.1(e) and the case should have proceeded to a fact-finding hearing so that Ms. Schwartz could prove her claim. At a minimum, Ms. Schwartz respectfully requests that this Court reverse the Commission's decision, reinstate the Complaint, and give her the

opportunity to pursue her claims in further proceedings before the Commission, including by amending her allegations if necessary.

Respectfully submitted,

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