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Reply to: Oakland Office

April 26, 2023

Via Email to: school.ethics@doe.nj.gov
School Ethics Commission
New Jersey Department of Education
P.O. Box 500
Trenton, New Jersey 08625
Attn: Director Kathryn A. Whalen, Esq.

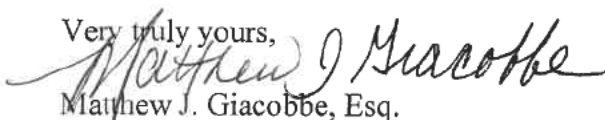
Re: Stephanie Siegel v. Sahar Aziz, Westfield Board of Education
Docket No. C 18-23

Dear Director Whalen:

This firm represents the Respondent, Sahar Aziz, in the above-referenced matter. Submitted herewith please find Respondent's Notice of Motion to Dismiss the Amended Complaint Filed in Lieu of an Answer Pursuant to N.J.A.C. 6A:28-9.1, Also attached is a Certification of Service.

Thank you for your attention and courtesies.

Very truly yours,



Matthew J. Giacobbe, Esq.

cc: Sahar Aziz
Jerome Marcus
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STEPHANIE SIEGEL,

Complainant,

v.

SAHAR AZIZ, WESTFIELD BOARD OF
EDUCATION,

Respondent.

SCHOOL ETHICS COMMISSION
STATE OF NEW JERSEY

Docket No. C-18-23

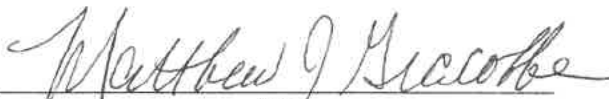
Administrative Action

**NOTICE OF MOTION TO DISMISS
IN LIEU OF AN ANSWER**

TO: SCHOOL ETHICS COMMISSION, ALL PARTIES OF RECORD

PLEASE TAKE NOTICE that the undersigned will apply to the School Ethics Commission, P.O. Box 500, 100 Riverview Plaza, Trenton, NJ 08625 as soon as counsel may be heard, for an Order to dismiss the Complaint.

CLEARY GIACOBBE ALFIERI & JACOBS LLC
Attorneys for Sahar Aziz

By: 
Matthew J. Giacobbe, Esq.

Dated: April 26, 2023

STEPHANIE SIEGEL,

Complainant,

v.

SAHAR AZIZ, WESTFIELD BOARD OF
EDUCATION, UNION COUNTY,

Respondent.

SCHOOL ETHICS COMMISSION
STATE OF NEW JERSEY

SCHOOL ETHICS COMMISSION
DOCKET #C18-23

**RESPONDENT'S MOTION TO DISMISS THE AMENDED COMPLAINT
FILED IN LIEU OF AN ANSWER PURSUANT TO N.J.A.C. 6A:28-8.1**

On the Brief: Matthew J. Giacobbe, Esq.
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PRELIMINARY STATEMENT

Respondent, Sahar Aziz is the Vice President of the Westfield Board of Education (“Board”). Aziz is the first elected female Arab and Muslim American board member in the Board’s history. On or about February 8, 2023, Complainant Stephanie Siegel filed a School Ethics Complaint against Respondent, alleging violations of the School Ethics Act. On March 30, 2023, Complainant, along with The Deborah Project filed an Amended Complaint.

The Complainant avers that the Respondent violated the Code of Ethics for School Board Members mainly due to frequent tweets/retweets on her personal Twitter account of content regarding the rights of Palestinians and Islamophobia; subjects in which Aziz has both expertise and interest, as a scholar and professor of law specifically examining the intersection of national security, race, religion, and civil rights, including but not limited to teaching courses on Islamophobia, critical race theory, evidence, torts, and Middle East law.¹ Aziz’s actions both on and off the dais are completely devoid as a matter of law of any violation of the School Ethics Act or the Code of Ethics for School Board Members.

The Amended Complaint is a ploy to dismantle Aziz’s academic scholarship and freedom of speech rights and censor any debate or criticism of Israel. Specifically, Siegel and the Deborah Project posit that any scholarship and/or speech supportive of Palestinians and critical of the State of Israel is by its very existence is anti-Semitic; relying for support almost entirely on the International Holocaust Remembrance Alliance (IHRA) working definition of antisemitism. However, calls for freedom, justice, and/or equality for Palestinians, or statements that criticizes

¹ Sahar Aziz Professor of Law and Chancellor’s Social Justice Scholar profile on the Faculty Directory of Rutgers Law School <https://law.rutgers.edu/directory/view/8277> (last visited March 20, 2023).

Israeli policies, are not the same as anti-Jewish hate. Blurring those lines results in censorship of constitutionally protected political speech and academic freedom.

Contrary to Complainant and the Deborah Project's specious assertions, neither Aziz nor her scholarship are anti-Semitic; rather, Ms. Aziz's publications and statements are engaging in speech on a matter of public concern; topics that touches not only on Aziz's professional interests and scholarship on race, religion, and law, but also her personal identity as an Arab and a Muslim.

Siegel and her legal counsel – The Deborah Project – are attempting to utilize the School Ethics Commission to enforce this viewpoint/content-based discrimination in direct contravention of the First Amendment to the U.S. Constitution. The goal of Siegel and the Deborah Project is to create a chilling effect for both Board Members and scholars such as Aziz from engaging in actions and speech that are within their First Amendment rights, but objectionable to The Deborah Project and Complainant. Furthermore, the Amended Complaint takes issue with Aziz's viewpoints as a scholar and her private actions on issues wholly unrelated to the governance of the Westfield Board of Education. They want to use the School Ethics Commission to perpetuate the false narrative that anyone who expresses criticism of Israel and/or support for Palestinian rights is automatically anti-Semitic.

The Amended Complaint uses the fact that Aziz did not provide a disclaimer as a cloak for Complainant's disapproval of Aziz's ideas expressed or shared; none of which are in any way related to the governance of the Board. Rather, Aziz's posts and her scholarship contain information on racism, religious freedom, and timely topics regarding Palestine and the State of Israel. These are subjects that breed debate and discourse, especially among the Jewish and/or

Israeli population within the Diaspora, Arab and Muslim Americans, and among legal and religious scholars.

Complainant alleges that Aziz's social media posts and reposting of other social media content on her personal accounts, all of which have nothing to do with the governance of the Westfield Board of Education or the Westfield public schools, are in conflict with her role on the Board. Such assumptions are insufficient as a matter of law to sustain ethics charges and also run afoul of Aziz's constitutional right to free speech as well as her academic freedom as a scholar and professor. Where Complainant's factual claims are accurate, they do not demonstrate any wrongdoing or violation of the School Ethics Act.

Aziz is a member of the faculty of Rutgers Law School in Newark, New Jersey. The Law School, similar to numerous places of higher education, embraces the use of social media to serve as a platform for academic scholarship, a recruitment tool for students, and generally sharing thought-provoking educational content. The Complainant purports that Aziz's alleged bias and her scholarly views as a Professor of Law are so distracting to the Jewish community, without any evidence to support this outlandish claim, that "it will discourage the members of the public from engaging with, and seeking remedy from, the board of education." See Amended Complaint at p. 2. Complainant is seeking to weaponize this ethics complaint, and misuse the School Ethics Commission, to dismantle Aziz's platform, scholarship, and pride as an Arab American, Muslim American, and Professor of Law.

As Complainant's Amended Ethics Complaint is completely devoid of any evidence of wrongdoing by Respondent, the complaint must be dismissed as a matter of law. Respondent moves to dismiss the Amended Complaint filed against her as the claims that are raised are frivolous and fail to state a claim upon which relief may be granted. Complainant alleges

violations of the School Ethics Act (“Act”), specifically N.J.S.A. §§ 18A:12-24(a), (b), (d), (f) and (e). Complainant further alleges violations of the Code of Ethics of School Board Members (“Code”), specifically N.J.S.A. § 18A:24.1(e). For the reasons discussed herein, all claims against Respondent must be dismissed.

STATEMENT OF FACTS

1. Sahar Aziz was elected on November 3, 2020 for a three-year term. She became the first elected female Arab and Muslim American Board member of the Westfield Board of Education. See January 5, 2021 Westfield Board of Education Minutes, https://drive.google.com/drive/folders/1jB2IFKUchLquwcS8Z-Ei_xUhk3AHTFEc.

2. Aziz was sworn in to her position on the Westfield Board of Education on January 5, 2021. See *Id.*

3. During her time on the Board, she has been instrumental in working alongside her colleagues to continue to elevate the caliber of education for the Westfield community while navigating the Board's budget, the COVID-19 pandemic, among other issues.

4. She is also a Professor of Law at Rutgers Law School (Newark) campus where she teaches courses on Evidence, Islam Secularism & Human Rights, National Security Law, Critical Race Theory Privacy & Information Law, and Torts.

5. Complainant as well as other community members have strategically filed this action or engaged in similar conduct to point out their disagreement with Aziz's viewpoints on any topic related to Middle Eastern politics, Israel, race, or religion –all of which are notably Aziz's scholarship and teaching interests, unrelated to Westfield Board of Education governance-- and have engaged in concerted personal attacks against Aziz.

6. Complainant is married to Kyle George and the Siegel/George household are behind this ploy to misuse the School Ethics Commission as a pathway for constructing a smear campaign against Ms. Aziz.

7. Although Siegel filed the initial Complaint, Mr. George has and continues to publicly criticize and single out Ms. Aziz during public comment portions of Board meetings regarding her non-Board related activity as a Law Professor and Social Justice Scholar.

8. The Siegel/George household have used Westfield Board of Education's public comments section on agenda items under the guise of criticizing the curriculum on Diversity, Equity, and Inclusion, to personally address or criticize Board member Aziz, not related to her Board work, but rather, her scholarship and social media activity as a Rutgers University Law Professor, unrelated to the governance of Westfield Board of Education.

9. For example, as early as the September 21, 2021 Board Meeting, Mr. George spoke about one of the books offered at school, but criticizes Ms. Aziz by alluding to critical race theory, a subject only taught by law professors, including Aziz, not K-12 educators in any of New Jersey's public schools. See September 21, 2021 Board Meeting at 2:11:28, <https://www.youtube.com/watch?v=fDiSOQc6vn4&list=PLeXEUoKgVp4yg2spE--PS6fbV7al-Plgk&index=17>

10. Mr. George has utilized the public comments portion of the meetings to set forth his views and speak freely, identifying himself as a Jewish parent. See October 5, 2021 Board of Education Meeting YouTube video, 1:00:01, <https://www.youtube.com/watch?v=kvX4ONnyKbQ>.

11. For example, Mr. George argued that the book Our Skin: A First Conversation About Race should not be used as part of the curriculum. Ms. Aziz voted in favor of Mr. George's perspective to not place the book in the general classroom. See October 5, 2021 Board of Education Meeting Minutes.

12. At the October 19, 2021 Board of Education Meeting, Mr. George spoke again notably describing the problems of the Our Skin book and taking another slight at critical race theory, a subject taught by law professors and scholars including Aziz. See October 19, 2021 Board Meeting

YouTubeVideo,1:18:51,<https://www.youtube.com/watch?v=k3UObfBwcuY&list=PLeXEUoKgVp4yg2spE--PS6fbV7al-Plgk&index=15>

13. During the public comment portion of the November 16, 2021 Board of Education meeting, Mr. George spoke freely about his interpretation of Martin Luther King, Jr.'s Letters from Birmingham Jail to address the quotes and excerpts on Judeo-Christian heritage. See November 16, 2021 Board of Education YouTube Video, 2:25:40, <https://www.youtube.com/watch?v=Y6zJBpXrwuI&list=PLeXEUoKgVp4yg2spE--PS6fbV7al-Plgk&index=14>

14. On December 14, 2021, Mr. George continues to publicly criticize scholarship or viewpoints that Ms. Aziz has either written or spoken on in various conferences and scholarship events in her capacity as a Rutgers University Professor of Law. For example, at this particular Board meeting, Mr. George critiqued a guest speaker at the schools who called Israel an apartheid state. He attributed this discussion, among others, to the alleged anti-Semitism in the high school. He notes, "As a Jew, I find your response hollow," directly addressing the Board of Education members, including Aziz who has shared scholarship regarding Israel-Palestine relations on her personal social media accounts. See December 14, 2021 Board of Education YouTube Video, at 2:05:16, <https://www.youtube.com/watch?v=mlwIDSvgQRM&list=PLeXEUoKgVp4yg2spE--PS6fbV7al-Plgk&index=13>

15. In another Board of Education meeting, on February 8, 2022, Mr. George again directly attacks Aziz for her social media activity and the content regarding interfaith relations, Israel, and Zionism. During the public comments portion of the meeting, he directly states, "One Board of Education member tweets and retweets that calls Israel an apartheid state. There is certain protocols and decorum of Board of Education members." See February 8, 2022 meeting, 2:05:20,

<https://www.youtube.com/watch?v=swYOEjtihm0&list=PLeXEUoKgVp4yg2spE--PS6fbV7al-Plgk&index=11>

16. At the Board's February 8, 2022 Board Meeting, the Board, including Ms. Aziz, welcomed discussion from several members of the public regarding various topics including technology spending, lifting the mask mandate in schools, anti-Semitism and Holocaust education, and graduation requirements. February 8, 2022 Board Meeting Minutes, [2021-2022 Minutes - Google Drive](#).

17. At the February 22, 2022 Board Meeting, Aziz highlighted the work of the Diversity Equity Inclusion audit and commended the schools for reintroducing Holocaust & Genocide studies, among other topics. [February 22, 2022 Westfield Board of Education YouTube Video](#), <https://www.youtube.com/watch?v=FbOVvrQS-t0&list=PLeXEUoKgVp4yg2spE--PS6fbV7al-Plgk&index=10> (last visited March 23, 2023).

18. At the March 22, 2022 Board of Education meeting, Mr. George critiqued the Holocaust curriculum presentation noting his own views on what aspects are missing from the curriculum. [See](#) March 22, 2022 Board of Education YouTube video at 38:32, https://www.youtube.com/watch?v=G0iHQbwp_eE&list=PLeXEUoKgVp4yg2spE--PS6fbV7al-Plgk&index=8

19. Once again, during the April 26, 2022 Board of Education meeting, Mr. George personally attacked Aziz during public comment referencing what he alleges are "anti-Israel tweets." [See](#) April 26, 2022 Board of Education YouTube video at 3:36:54, https://www.youtube.com/watch?v=J_SxMxhdvis&list=PLeXEUoKgVp4yg2spE--PS6fbV7al-Plgk&index=5

20. At the August 30, 2022 Board of Education meeting, Mr. George directly attacks and singles out Board member Aziz and specifically criticizes her Twitter activity. See August 30, 2022 Board of Education YouTube Video, at 2:32:48, <https://www.youtube.com/watch?v=G8RHOpdkwrw>

21. On September 20, 2022, he reiterates his personal animus toward Board member Aziz and specifically notes that an Op-Ed she wrote relating to her research and scholarship titled “Confronting Liberal Islamophobia” was an affront to Mr. George and the White community. He stated, “VP Aziz can’t seem to fathom that people that disagree with her actions and words are doing so for reasons that have absolutely nothing to do with her identity, faith, heritage, ethnicity or anything of this sort. They are about her actions and words. How can she continue to serve on the Board as Vice President if she is unable to hear criticism from her fellow Board of Education members, or the community at-large without lashing out with absolutely zero reflection about her own actions.” See September 20, 2022 Board of Education YouTube Video, 1:08:20, <https://www.youtube.com/watch?v=7K0u3wab6NE>

22. At that same meeting, he further alleged that Aziz was unable to abide by the Code of Ethics for School Board members because she tweeted an Op-Ed that Congresswoman Ilhan Omar, a Muslim member of the U.S. Congress, retweeted. See Id.

23. This year, at the February 7, 2023 Board of Education meeting, 2:12:00, Mr. George discusses again freely his views on Israel, the Holocaust, and genocide and the components missing in the curriculum. However, during the same public comment portion, he notes his concern over one BOE member (referencing Aziz), that her personal and professional actions signal that she does not share the values of the International Holocaust Remembrance Alliance (“IHRA”) and referenced one of her panel discussions at Rutgers University-Newark on

Liberating Palestine, which is one of her scholarship subjects as a law professor. See February 7, 2023 Board of Education YouTube video, 2:12:00, https://www.youtube.com/watch?v=94ejEBqe_8U&list=PLcXEUoKgVp4zIQxKVAiAb-afaAkp6UGI_&index=4

24. Aziz, as a scholar of race and religion, should not be criticized or punished on the basis of her academic scholarship and professional views, all of which are not related to the governance of the Westfield Board of Education and do not compromise her duties as a member of the Board. None of her scholarship, panel presentations, or legal interests are related to her work as a member of the Board of Education.

25. With respect to Board activity relating to Holocaust education, on May 17, 2022 the Board approved a contract between the Westfield Board of Education and Kean University Council for Global Education and Citizenship for the 2022-2023 school year to teach Holocaust and Prejudice Reduction courses during the fall and spring semesters to teachers in the district. See May 17, 2022 Board Meeting Minutes, p. 11.

26. Aziz voted in favor of the initiative.

27. On December 13, 2022, the Board unanimously approved the school calendar which includes various Jewish observances and holidays. See December 13, 2022 Board Meeting Minutes.

28. Public Board meetings, including the Board minutes show that Aziz has consistently voted and advocated for the Jewish community. Moreover, a review of the Board meetings during Aziz's tenure unequivocally demonstrate that she has never advanced "vituperation utilizing Nazi terminology."

29. On or about November 2022, Aziz, along with fellow Board Members, signed the No Place for Hate pledge. The No Place for Hate initiative, developed by the Anti-Defamation League, is designed to create inclusive school communities by promoting unity and respect, and empowering schools to reduce bullying, name-calling and other expressions of bias.²

STANDARD FOR MOTION TO DISMISS

In determining whether to grant a Motion to Dismiss, the School Ethics Commission shall review the facts in the light most favorable to the non-moving party, and determine whether the allegations if true, could establish a violation of the Act. The Regulations further provide that the Commission may, in its discretion, dismiss a complaint in its entirety where the complaint, on its face, fails to allege facts sufficient to maintain a claim under the Act. N.J.A.C. 6A:28-10.2(a)(7); N.J.A.C. 6A:28-10.8(a)(5).

² Anti-Defamation League, No Place for Hate Schools, Central New Jersey, Westfield High School; <https://nynj.adl.org/2021-2022-no-place-for-hateschools/>

LEGAL ARGUMENT

POINT I

DISMISSAL OF THE AMENDED COMPLAINT IS WARRANTED BECAUSE COMPLAINANT'S ALLEGATIONS AGAINST BOARD MEMBER AZIZ ARE BASELESS AND WITHOUT EVIDENCE OF WRONGDOING AND ENFORCEMENT WOULD CHILL AZIZ'S CONSTITUTIONAL RIGHT TO FREE SPEECH AND PRINCIPLES OF ACADEMIC FREEDOM

1. Alleged Violations of the Code of Ethics of School Board Members - N.J.S.A. § 18A:12-24.1(e)

N.J.A.C. 6A:28-6.4(a) provides that a complaint brought against a Board member for violating the Code of Ethics must meet specific standards. In order to prevail, the Complainant's burden of proof for her allegations of violation of part (e) of N.J.S.A. § 18A: 12-24.1 are as follows.

a. Alleged Violations of N.J.S.A. § 18A:12-24.1(e)

N.J.S.A. § 18A:12-24.1(e)

Factual evidence of a violation of N.J.S.A. § 18A:12-24.1(e) shall include evidence that the respondent made personal promises or took action beyond the scope of the respondent's duties such that, by its nature, had the potential to compromise the district board of education or the board of trustees.

Under the First Amendment, the "government may not grant the use of a forum to people whose views it finds acceptable, but deny use to those wishing to express less favored or more controversial views." Police Dep't of Chi. v. Mosley, 408 U.S. 92, 96 (1972). This principle arises "from the most basic values underlying the First Amendment," including "the right to think, believe, and speak freely, the fostering of intellectual and spiritual growth, and the free exchange of ideas necessary to a properly functioning democracy." Susan H. Williams, Content Discrimination and the First Amendment, 139 U. Pa. L. Rev. 615, 676-94 (1991) (defining First Amendment values to include pursuit of truth, proper functioning of a democracy, fulfillment of

human potential, self-expression, tolerance, and encouragement of dissent”). It has long been recognized that the First Amendment, beyond protecting speakers, also protects the rights of listeners. The U.S. Supreme Court has referred to a First Amendment right “to receive information and ideas,” and has acknowledged that freedom of speech “necessarily protects the right to receive.” Va. State Bd. of Pharmacy v. Va. Citizens Consumer Council, 425 U.S. 748, 757 (1976). Furthermore, the Court and academics alike agree on the importance of the First Amendment's protection of “unfettered interchange of ideas” to the democratic process. Roth v. United States, 354 U.S. 476, 484 (1957).

Laws that burden political speech are subject to strict scrutiny for a violation of the First Amendment, which level of scrutiny requires the Government to prove that the restriction furthers a compelling interest and is narrowly tailored to achieve that interest. Citizens United v. Federal Election Commission, 558 U.S. 310 (2010).

Recently, in Elizabeth Schwartz v. Abedrabbo and Awwad, Clifton Board of Education, Passaic County, SEC Docket No. C40-21 (January 25, 2022), the School Ethics Commission considered a matter similar to the present Amended Complaint where the complainant asserted that Respondent Awwad made comments regarding the oppression of Palestinian people in the State of Israel. In Schwartz, the complainant alleged that Respondents' actions were anti-Semitic and would compromise the trust of the community. In that case, Respondent Awwad commented on Israel's oppression of Palestinians and called for peace and an end to colonialism and apartheid. The Complainant in the Schwartz case similarly alleged that the Respondents were making inappropriate comments and alleged that those actions were contrary to the educational welfare of the children of Clifton. The School Ethics Commission emphasized that “personal comments do not ‘amount to taking action’ and further noted that the allegations ‘lack any basis upon which to

conclude that Respondents conduct in making public comments, did, or had the potential to, compromise the Board” and thus dismissed the Complaint. See Schwartz at p. 5. The Deborah Project has filed an amicus brief in support of an appeal by the complainant in that case.³

In In the Matter of Daniel Leonard, the School Ethics Commission concluded that discriminatory and Islamophobic statements made by a Board member on his private social media violated *N.J.S.A. 18A:12-24.1(e)*, finding that the Board member’s “disparaging” social media posts had “the potential to discourage members of the public, namely members of the Muslim community, to engage with the Board ‘given what may seem to be an apparent bias.’”⁴ The discriminatory statements in Leonard were discriminatory on their face. No additional explanation or definitions were necessary in order to understand the statements as offensive to Muslims. They called for threats that certain Muslim leaders die or comments with the usage of disparaging and/or derogatory name-calling tactics

In another matter, the School Ethics Commission reviewed a case involving political speech shared on social media and decided that even when a Board member shares and disseminates campaign flyers and social media posts to endorse three individual running for office, the statements and the campaign letter are only in reference to the campaign content and not in reference to or affiliate with the Board, and therefore not a violation of the Code of Ethics for School Board Members. See Robin Canetti v. Ebersbach, Ringwood Board of Education, Passaic County, School Ethics Commission, Docket No. C88-22 (February 21, 2023).

³ Eve Glover, *Anti-Israel Speech From Clifton Board Of Education Commissioners In New Jersey Results In Legal Action*, JEWISH PRESS (Sept. 7, 2022), <https://www.jewishpress.com/sections/community/jewish-community/anti-israel-speech-from-clifton-board-of-education-commissioners-in-new-jersey-results-in-legal-action/2022/09/07/>.

⁴ Final Decision, In the Matter of Daniel Leonard, Toms River Regional Board of Education, Ocean County, Docket No. *EEC-01230-20*, available at <https://www.nj.gov/education/legal/ethics/2021/docs/C56-19%20and%20C57-19.pdf>.

As the School Ethics Commission noted in Advisory Opinion A02-06, board members do not surrender the rights that they have as private citizens, such as First Amendment rights, when they become members of a school board. Previously, in Sophia LaPorte v. Rashun Stewart and Cornell Davis, C26-05, (September 27, 2005), the Commission upheld the rights of two board members to engage in political activity. In LaPorte, two board members were exercising their right to engage in political activity when, as private citizens, they participated in a press conference to endorse a candidate in the campaign for Mayor. In LaPorte, the School Ethics Commission noted that the board members did not identify themselves as board members or state that they were at the press conference in their role as members of the board. Instead, the board members identified themselves as community activists who were endorsing a certain candidate. Similarly, in Long Branch School Employees Association v. Avery W. Grant, C15-03, (July 22, 2003) the School Ethics Commission upheld the right of a board member to picket outside of a building where a district meeting was being held.

In Advisory Opinion A03-07, the School Ethics Commission clarified and made a distinction that private action is non-Board related action. In Marc Sovelove v. Paul Breda, C49-05, (September 26, 2006) the Commission found that once a board member's action is deemed to be "board action," it cannot also be deemed "private action" because such a finding would be contradictory. Thus, "private action" cannot be "board action." Further, in I/M/O Bruch Freilich, C18-04 & C19-04, (April 4, 2005), the Commission found that a board member violated N.J.S.A. § 18A:12-24.1(e) when he sent an unauthorized letter to a private donor. Even though the board member signed the letter in his capacity as chair of the technology committee, he took private action because the board member did not have authorization to send the letter. Id., page 8. Thus,

in taking private action to write a letter to the editor regarding the board's budget, members must ensure their private action does not compromise the board.

In Count I, Complainant Siegel alleges that she takes issue with Vice President/Board Member Aziz's activity on social media, specifically referencing that Aziz does not provide disclaimers on the tweets and retweets of various content that complainant "believe(s) . . . crosses the line into antisemitism." See Amended Complaint at p. 1. However, in that same paragraph, Complainant contradicts herself stating that "Aziz is free to support whatever causes she wants as a private citizen" and asserting that "nothing in my claims is about any of Sahar Aziz's personal religious beliefs, ethnicities, or any other identity or attribute." In fact, the entire Amended Complaint goes on to criticize the merits of the very content that Aziz shares namely related to her identity as an Arab American, Professor of Law and scholar on Islamophobia and Middle East politics.

For example, on August 11, 2022, Aziz shared an article link and supporting "Westfield Teachers Learning About Teaching #Race." This tweet continues and clearly provided a disclaimer, "speaking in my individual capacity and not on behalf of the board." Professor Aziz is a scholar on race and religion, among other topics. One of her scholarly works, a book titled, "The Racial Muslim: When Racism Quashes Religious Freedom," is about how race and religion intersect and compares discrimination against immigrant Muslims today with the prejudicial treatment of Jews, Catholics, Mormons, and African American Muslims during the twentieth century.⁵ The content of the second tweet that Complainant takes issue with does nothing more than share a *Philadelphia Inquirer* article noting that an "Athletic trainer was fired from Philadelphia's Agnes Irwin School for her pro-Palestine stance." The article shared is not related

⁵ Sahar F. Aziz, *The Racial Muslim: When Racism Quashes Religious Freedom*, University of California Press, November 2021, First Edition - <https://www.ucpress.edu/book/9780520382299/the-racial-muslim>

to Westfield Public Schools or the communities within Westfield, Union County, and the State of New Jersey. That article did not require a disclaimer because it is not related to the Westfield public schools or the Board of Education and would be clearly deemed private action.

The Amended Complaint provides no evidence that Aziz's tweets and retweets about topics within her research interests as a Rutgers Professor of Law compromise the Board of Trustees or the Board of Education. Similar to Awwaad and Abedrabbo in the Schwartz matter, the School Ethics Commission should find that Complainant's allegations are a personal attack on Aziz's viewpoints and misconstrue her scholarship and tweets on religious freedom and Palestinian human rights as against the Jewish community. Aziz's social media platform showcasing topics regarding her scholarship should not be diminished.

Complainant's political and religious views are in direct conflict with the content that Aziz shares but that should not be a reason to use the School Ethics Commission to prevent Aziz's scholarship, views, and beliefs on religion and race from being shared on her private social media account or professional activities. Complainant's Amended Complaint is a subjective critique of the stance that Aziz takes on a topic unrelated to the governance of the Board. For example, Complainant argues that Aziz's retweet of the IHRA definition of antisemitism "gives the impression that she does not view the IHRA definition to be legitimate, going against the community standard." Complainant believes any Board member that politically disagrees with Complainant's opinion that the IHRA is the only acceptable definition of anti-Semitism would undermine the confidence in the Board and casts doubt about her ability to properly identify and take action in response to discrimination against Jewish students or is "anti-Israel."⁶

⁶ "First Ever 40+ Jewish Groups Worldwide Oppose Equating Antisemitism with Criticism of Israel," Jewish Voice for Peace, July 17, 2018, <https://www.jewishvoiceforpeace.org/2018/07/first-ever-40-jewish-groups-worldwide-oppose-equating-antisemitism-with-criticism-of-israel/>; Progressive Israel Network Groups Oppose Codification of IHRA Working Definition of Antisemitism, Citing Strong Potential for Misuse," Progressive Israel Network, Jan. 12,

In fact, the Complainant relies on the IHRA definition to connect the dots between Aziz's social media activity and the claims of anti-Jewish animus. However, the IHRA definition has not been adopted by the Westfield Board of Education.

Complainant's allegations that Aziz is anti-Semitic are far from the truth. In fact, during a Board meeting held on February 22, 2022, at 1:53:39, Aziz highlighted the work of the Diversity Equity Inclusion audit and commended the schools for reintroducing Holocaust & Genocide studies, among other topics. **February 22, 2022 Westfield Board of Education YouTube Video**, <https://www.youtube.com/watch?v=FbOVvrQS-t0&list=PLeXEUoKgVp4yg2spE--PS6fbV7al-Plgk&index=10> (last visited March 23, 2023). Any perspective that Aziz has regarding what she believes is an apartheid state is a question of political viewpoint that should not be chilled. Complainant's disagreement with Aziz's views on Palestinian human rights is not evidence of compromising the Board of Trustees or the Board of Education.

The Amended Complaint, under Claim #1, goes on to point out that Aziz signed a document called Palestine & Praxis. This was not in the context of anything remotely related to her work on the Board of Education. Rather, this document was signed by various professors throughout the country. This document was never shared with Board of Education members or ever discussed at Board of Education meetings. The Amended Complaint also fails to cite to any evidence that shows that Aziz violated the School Ethics Act or the Code of Ethics for School Board Members.

Under claims #2 through #5, the Amended Complaint pulls from Aziz's Twitter account and culls any tweet or retweet that allegedly goes against the IHRA definition of antisemitism. The Board of Education has never adopted, voted on, nor discussed the IHRA definition as part of

2021, <https://www.progressiveisraelnetwork.org/progressive-israel-network-groups-oppose-codification-of-ihra-working-definition-of-antisemitism-citing-strong-potential-for-misuse/>

its agenda.⁷ Thus, this is an attempt by Complainant to chill any debate or discussion by any professor, scholar, or elected official, particularly who identify as having heritage that is Middle Eastern, Arab, and Muslim, on the topic of Israel.

Finally, the Amended Complaint emphasizes that Aziz's expressions "have discouraged or are likely to discourage members of the public, to engage with the Board." Amended Complaint at p. 9. This is clearly false as referenced above the various Board of Education meetings during 2022-2023 where members of the public, who identify as Jewish, have spoken freely and at length regarding their identity and perspectives. The Complainant relies on social media tweets, unrelated to Westfield Board of Education or the school community. Unlike in Leonard, the tweets and retweets are all related to Aziz's scholarship interests and expertise and are in no way targeting any member of the Jewish community. Aziz's social media activity do not contain threats or disparaging, violent remarks towards the Jewish community. See In the Matter of Daniel Leonard, Toms River Regional Board of Education, Ocean County, OAL Dkt No. EEC-01230-20 (November 23, 2021).

Accordingly, Count I must be dismissed as a matter of law as there is no violation of N.J.S.A. § 18A:12-24.1(e) by Respondent.

⁷ Complainant points to the town of Westfield's resolution adopting the IHRA definition as a foundation for the claims against Aziz. See Westfield Council Conference, *Agenda* (Sept. 14, 2021), <https://www.westfieldnj.gov/AgendaCenter/ViewFile/Agenda/09142021-547> (emphasis added). However, the resolution states, "The Town Council of the Town of Westfield endorses and adopts the *non-legally* binding International Holocaust Remembrance Alliance (IHRA) Working Definition in full" (emphasis added). Michael Benyair, *Former AG of Israel - With great sadness I conclude that my country is now an apartheid regime*, THE JOURNAL, Feb. 10, 2022, available at <https://www.thejournal.ie/readme/israel-apartheid-5678541-Feb2022/>.

POINT II

COMPLAINANT’S ALLEGATIONS ARE AN ATTEMPT TO DISMANTLE THE PROFESSOR OF LAW’S SCHOLARSHIP AND PERSONAL POLITICAL VIEWS AND ASSOCIATION WHICH ARE NOT ONLY UNRELATED TO BOARD SERVICE BUT ARE NOT A VIOLATION OF THE SCHOOL ETHICS ACT, THEREFORE THE AMENDED COMPLAINT MUST BE DISMISSED AS A MATTER OF LAW

1. **Alleged Violations of the School Ethics Act - N.J.S.A. § 18A:12-24(a), N.J.S.A. § 18A:12-24(b), N.J.S.A. § 18A: 12-24(d), N.J.S.A. § 18A: 12-24(f)**

a. **Alleged Violations of N.J.S.A. § 18A:12-24(a)**

N.J.S.A. § 18A:12-24(a) provides that “[n]o school official or member of his immediate family shall have an interest in a business organization or engage in any business, transaction, or professional activity, which is in substantial conflict with the proper discharge of his duties in the public interest.” Complainant alleges that Ms. Aziz’s “engagement with organizations and services to special interests and causes gives the reasonable expectation that [she] has prejudiced her independence of judgment.” Amended Complaint at p. 12.

Aziz’s social media activity are a reflection of her personal beliefs, scholarship, and content that is relevant to her work outside of the Board of Education that relates to analysis of religious freedom, foreign policy, Middle East politics, and the intersection of race and religion. Complainant asserts that “Aziz’s personal and professional activism – which includes frequently tweeting and retweeting anti-Israel sentiment, speaking and lecturing in support of polarizing organizations, her role as the Director of a center of Rutgers University which frequently puts out anti-Israel sentiment. . . is in substantial conflict with her role on the BOE and can reasonably be expected to prejudice her independence of judgment in the exercise of her official duties.” For example, Aziz spoke at an American Muslims for Palestine event at Rutgers University-Newark

that the Complainant alleges is in direct conflict with the views of the Anti-Defamation League, not the Board of Education or the public schools.

Similar to the respondents in Schwartz, Aziz is being attacked for her scholarship, personal views, and the causes and values that she believes in. Her association with various organizations and her scholarship are unrelated to the Westfield Board of Education. Even if some community members disagree with the content of her social media activity or her scholarship, Aziz's actions are not in any way a substantial conflict with her duties on the Board and member of the Westfield community. Accordingly, Counts 2 and 3 should be dismissed as a matter of law.

b. Alleged Violations of N.J.S.A. § 18A:12-24(b) and (d)

Here, the Complainant alleges that Respondent has prejudiced her independence of judgment by her personal and professional engagements. The Complainant fails to provide any factual evidence of Respondent using her official position to secure unwarranted privileges, advantages or employment. Accordingly, this claim must be dismissed.

c. Alleged Violations of N.J.S.A. § 18A:12-24(f)

N.J.S.A. § 18A:12-24(f) provides that:

[n]o school official shall use, or allow to be used, his public office or employment, or any information, not generally available to the members of the public, which he receives or acquires in the course of and by reason of his office or employment, for the purpose of securing financial gain for himself, any member of his immediate family, or any business organization with which he is associated.

Here, the Complainant alleges that Respondent used her position on the board to secure financial gain, specifically alleging that Respondent “simultaneously associated her election to the BOE with her professional employment at RUCSRR.” Specifically, Complainant alleges that Aziz used her election to the BOE to garner attention for RUCSRR and/or political figures and their social media followings could advantage Aziz and/or her employer. This claim is, again, meritless

and does not fall within the context of N.J.S.A. § 18A:12-24(f). This provision requires a showing that a school official used their position or information generally not available to the public to secure financial gain.

To violate N.J.S.A. § 18A:12-24(f), there must be a showing that a board member used information not generally available to the public to secure financial gain for themselves, a family member, or a business organization they are involved with. See Garcia v. Norwood Board of Education, OAL Dkt. No. EDU 04851-21, final decision, Comm'r (N.J. Adm. Dec. 9, 2021) (finding that a board member did not violate N.J.S.A. § 18A:12-24(f) where a board member was involved with a non-profit advocate for special needs students, an adversary of the board, but no evidence of using board-privy information for the organization's benefit was provided).

Complainant alleges that the representation of Respondent of her mentioning the Rutgers Center for Security, Race and Rights ("RUCSRR") and political figures such as Rep. Tlaib and Rep. Omar on her personal Twitter account as somehow a financial gain secured by Respondent using her official position as a Rutgers University *Professor of Law*, not a Board member. At the same time, the Complainant fails to proffer any evidence of the Respondent using the resources available to her as a Board member to secure personal financial gain. Nor does the Complainant allege that any personal financial gain was secured by Respondent. As stated previously, Respondent, acting on behalf of her employer or as a Professor of Law is separate and apart from her duties as an official to the Westfield BOE. Aziz does not conflate the two. Rutgers University is a public university and as a scholar, Aziz uses social media as a platform for her scholarship and expression of her political views. This activity is part and parcel of her job as a law school professor and are not in violation of the School Ethics Act.

The claim of an alleged violation of N.J.S.A. § 18A:12-24(f) is devoid of any possible merit and must be dismissed.

POINT III

THE AMENDED COMPLAINT IS A BAD FAITH ATTEMPT BY THE SIEGEL/GEORGE HOUSEHOLD AND THE DEBORAH PROJECT TO SILENCE SCHOLARS AND ELECTED OFFICIALS OF ARAB DESCENT AND MUSLIM FAITH AS PART OF A LARGER HARASSMENT CAMPAIGN

On April 17, 2023, The Deborah Project submitted a supplement to the Amended Complaint on behalf of Complainant Siegal. The document submitted as a supplement, is a letter from The U.S. Department of Education, Office for Civil Rights regarding the University of Vermont and the State Agricultural College's response to complaints that college students were subjected to discrimination at the University based on their Jewish ancestry. The Deborah Project provides the document that has zero connection to the Respondent and/or the Westfield Board of Education and/or the Westfield school community. In the Complainant's transmittal letter to the School Ethics Commission, the letter states that the document sets for the Office for Civil Rights' "position that discrimination against Zionists and Zionism constitutes antisemitism and discrimination against Jews." This statement is completely taken out of context regarding the allegations in the complaint against the University of Vermont. The description is also not accurate and mischaracterizes the letter and the Office for Civil Rights resolution agreement with the University.

The complaint against the University of Vermont relate to college students who vandalized the Hillel building on campus and a teaching assistant who made a series of anti-Zionist public tweets, suggesting compromising student's grades. This fell under the University's Discrimination Policy. The Office for Civil Rights and the University's agreement states, "This Agreement does not constitute an admission of wrongdoing or liability by the University pursuant to Title VI." Nowhere in either the letter or the resolution does OCR take a "position" equating anti-Zionism with antisemitism or that anti-Zionism would violate Title VI. The letter and resolution agreement

also make clear that OCR did not complete its investigation, nor did it find a Title VI violation. Further, the resolution involved revisiting and revising the University's policies to ensure that its anti-discrimination training to staff and responding to complaints were current. Therefore, the latest filing by The Deborah Project has no relation or relevance whatsoever to this Amended Complaint, Aziz, or the Westfield Board of Education and must be disregarded. It is a red herring, further evincing their bad faith attempt to censor Aziz's professional work as a Rutgers University Professor of Law.

The baseless allegations in the Amended Complaint, demonstrate a broader harassment campaign against Aziz and scholars/elected officials like her. These false accusations are not just about Aziz's social media tweets which Complainant finds controversial and discriminatory, but are part of broader efforts aimed at vilifying Muslim and Arab leaders across the country who advocate for Palestinian human rights.⁸ These campaigns specifically target individuals at their schools and workplaces, publicizing their accusations to university administrations and employers.⁹ The School Ethics Commission as well as Boards of Education meetings are not the appropriate forum for The Deborah Project and Complainant Siegal to voice their opposition to and disagreement with Aziz's scholarship or the social media activity unrelated to her Board service. Therefore, the document and the Amended Complaint must be dismissed in its entirety.

⁸ See, e.g., PALESTINE LEGAL AND CTR. FOR CONST. RTS., THE PALESTINE EXCEPTION TO FREE SPEECH, (2015) <https://static1.squarespace.com/static/548748b1e4b083fc03ebf70e/t/560c2e0ae4b083d9c363801d/1443638794172/P%20ailestine+Exception+Report+Final.pdf>.

⁹ See Against Canary Mission, <https://againstanarymission.org/>

POINT IV

RESPONDENT IS ENTITLED TO AN AWARD OF SANCTIONS AS COMPLAINANT'S ALLEGATIONS ARE FRIVOLOUS

N.J.S.A. § 18A:12-29(e) provides that:

If prior to the hearing the commission determines, by majority vote, that the complaint is frivolous, the commission may impose on the Complainant a fine not to exceed \$500. The standard for determining whether a complaint is frivolous shall be the same as that provided in subsection b. of section 1. of P.L.1998, c.46 (C:2A:15-59.1).

N.J.S.A. § 2A:15-59.1, the Frivolous Litigation Statute, serves the dual purpose of being punitive and compensatory. Its purpose is to deter frivolous litigation and to reimburse the party that has been victimized by the frivolous litigation. Toll Bros., Inc. v. Twp. of W. Windsor, 190 N.J. 61, 67 (2007). A complaint is frivolous if the claimant knew, or should have known, that the complaint was without any reasonable basis in law or equity and could not be supported by a good faith argument for an extension, modification or reversal of existing law. See Toll Bros., supra, 190 N.J. at 67; and see N.J.S.A. § 2A:15-59.1.

The Amended Complaint alleges violations of the School Ethics Act based upon facts that, if anything, demonstrate Respondent's compliance with applicable laws. Furthermore, the Amended Complaint is completely devoid of any factual evidence. Rather the Complainant launches baseless, meritless claims without providing any detail or factual evidence. Instead of alleging facts that substantiate claims under the Act, the Complainant refers to the Respondent's proper conduct of acting together with her fellow Board Members to see that the schools are well run.

Based upon the foregoing, the Complainant's complaint is frivolous and a fine should be levied against her and The Deborah Project to offset the costs, borne by the taxpayers, in defending Respondent, Sahar Aziz.

CONCLUSION

For the foregoing reasons, Respondent respectfully submits that the Amended Complaint must be dismissed with prejudice, in its entirety.

CLEARY GIACOBBE ALFIERI JACOBS LLC,
Attorneys for Respondent,

By: Matthew J. Giacobbe
MATTHEW J. GIACOBBE, ESQ.

Dated: April 26, 2023

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STEPHANIE SIEGEL,

Complainant,

v.

SAHAR AZIZ, WESTFIELD BOARD OF
EDUCATION,

Respondent.

SCHOOL ETHICS COMMISSION
STATE OF NEW JERSEY

Docket No. C-18-23

Administrative Action

CERTIFICATION OF SERVICE

Matthew J. Giacobbe, Esq.
Attorney for Respondent

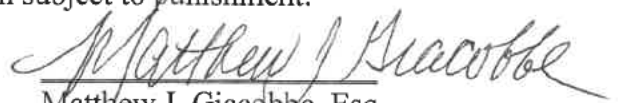
TO: SCHOOL ETHICS COMMISSION, ALL PARTIES OF RECORD

Matthew J. Giacobbe, Esq., being of full age, hereby certifies and says:

1. On the dated indicated below, I caused a copy of Respondent's Motion to Dismiss the Amended Complaint Filed in Lieu of an Answer Pursuant to N.J.A.C. 6A:28-8.1 with regard to the above-captioned matter to be filed with the School Ethics Commission electronically at school.ethics@doe.nj.gov.

2. On the date indicated below, I further caused a copy of the above items to be forwarded electronically to representatives for Complainant, Stephanie Siegel at their email addresses.

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.


Matthew J. Giacobbe, Esq.

Dated: 4-26-23