
Orlando Mercado	:	BEFORE THE SCHOOL ETHICS COMMISSION
Complainant,	:	OF NEW JERSEY
v.	:	SCHOOL ETHICS ACT
Keith Gibbons	:	WRITTEN STATEMENT & AFFIRMATIVE
Respondent.	:	DEFENSE

I, Keith Gibbons, residing at [REDACTED], Glendora, NJ 08029 (“Respondent”) files this written statement in accordance with N.J.A.C. 6A:28-7 et seq., including a response and answers to Orlando Mercado’s (“Complainant”) complaint to the School Ethics Commission alleging violations under N.J.S.A. 18A:12-21 et seq. as follows:

Relevant Background Information

Respondent is a journalist and maintains a citizen-run news source published as a website/podcast entitled the “Gloucester Township Observer” (or “GT Observer”), publicly available at <https://gtobserver.com>, which primarily focuses on Gloucester Township Council meetings. Respondent is also a member of the Gloucester Township Board of Education, to which he was elected November 2022. The website/podcast predates his term on the Board.

Complainant serves as President of the Township Council and been a council member for over twenty years, since 2004. As Council President, he has served as a liaison to the Gloucester Township Municipal Utilities Authority (MUA), and led a highly controversial effort to dissolve the MUA and then endeavor to sell the newly dissolved utility to a private corporation, New Jersey American Water. He led this effort as Council President in coordination with the Township Administration (the Mayor ultimately recused himself), prior to the issuance of any public notice or the conduct of any public discussion on the proposal.^{1,2}

¹ It should be noted that the Township Mayor is also the Director of Government Relations for New Jersey American Water.

² An early public record concerning the dissolution plan was obtained via a public records request. That January 17, 2023 letter, written by the township’s Legal Department to the MUA Commissioner President, is entitled “Re: Dissolution of Gloucester Township MUA.” The letter states: “Please be advised that Mayor David

The Complainant's proposal to privatize the utility for sale to New Jersey American Water for \$143 million was ultimately overwhelmingly rejected by over 80%, by a vote of 22,000-to-5,000 of Gloucester Township voters, in November 2024.³ Iconic signs were found all over town messaging "Don't sell our sewer."

Notably, Respondent led the successful public campaign against this multi-million-dollar privatization referendum, and was among the first to report on the matter in connection with his citizen-journalism covering the council meetings.

In addition to being a public actor by virtue of his role as Township Council President, Complainant also serves as the Human Resources Supervisor of the Gloucester Township Public School District.

Respondent announced on January 29, 2025, his run for Township Mayor in the November 2025 election, and is doing so as an independent candidate unaffiliated with any political party. In his announcement, he first listed a top priority of restoring the MUA to its full functionality, which "must be managed transparently and effectively ... not to balance budgets or prioritize profits over public interests."⁴ His second listed priority is the introduction of term limits for elected officials, explaining "no one person or group should hold a monopoly on our township's future." Third, ensuring accountability in local government that "serves everyone, not just a select few. Recent events have made it clear that we must demand accountability at every level. Gloucester Township deserves leadership with integrity, transparency, and a commitment to doing what's right for the people, not for personal or political gain."

He impressed upon listeners: "Accountability starts with us. I fought for you before and I will do it again. When they tried to sell off our sewer system, I stood with the community, educated residents, and fought for what was right, and together, we won. That's the kind of leadership I will bring. Action, not empty promises. Accountability, however, isn't something that one person can bring alone. It starts with your voice, your vote, and your participation. Together, we can build a government that works for all of us."

R. Mayer and Council President Orlando Mercado of the Township of Gloucester have requested that this office inform you that the Mayor and Council Administration intends to move forward with the dissolution of the MUA." The letter is publicly available [here](#), along with related documents on the GT Observer website: <https://gtobserver.com/a-recap-of-the-mua-dissolution/>.

³ Zoe Reed, *Gloucester Township residents vote against proposed sewer sale*, PBS NPR WHYY NEWS (November 6, 2024), <https://whyy.org/articles/gloucester-township-new-jersey-water-privatization-referendum-vote-election-2024/>.

⁴ *Keith Gibbons Announces he will be running for Mayor of GT in 2025*, Gloucester Township Observer, YOU TUBE (Jan. 29, 2025), <https://www.youtube.com/watch?v=P7yJdKEDukk> (last accessed May 20, 2025).

Respondent did not pursue political party nomination in the June 2025 primary, respectfully declining the Township's Republican party's invitation to run as their candidate.⁵ As such, he is not running in the upcoming June 2025 primary, and his campaign will ramp up following the primary during the summer and through early Fall.

The timing and nature of the underlying ethics Complaint merits attention, as does the relevant timing which may result from its potential forthcoming public litigation in the lead-up to the general election. The Complaint was suddenly lodged on March 12, 2025, following the Respondent's recent announcement of his bid for office, asserting violations of the Code of Ethics, N.J.S.A. 18A:12-24.1 subparts (f), (g), and (i), in connection with two podcast comments, the first dating back to a year ago in May 2024.

That May 2024 podcast followed 1) the dissolution of the MUA in May 2023; 2) a sudden announcement by the Township Council ten months later on March 25, 2024 that it would sell the utility pursuant to a public referendum to be posed to the voters in November 2024, and 3) yet another May 13, 2024 Township Council meeting during which the public vociferously contested the efforts.⁶

The statement which the Complainant takes issue with concerns Respondent's explanation of the Complainant's whereabouts during the May 13, 2024 Township Council meeting, noting that the Complainant was absent in order to attend another public meeting for the Board of Education because his contract was up for review before that board. This is a matter of public record, even before the Respondent's rather innocuous and matter-of-fact commentary on the topic. If this commentary actually compromised Respondent's independent judgment as a member of the Board of Education, or the board's conduct or perception thereof, or the confidentiality of

⁵ *A Message from Keith Gibbons: Running as an Independent for All*, Keith Gibbons for Mayor (May 8, 2025), <https://gibbonsformayor.com/a-message-from-keith-gibbons-running-as-an-independent-for-all/> (last accessed May 20, 2025).

⁶ The timeline of events and clips of pertinent public comments and colloquy with the Township Council was chronicled by the GT Observer. See *Complete timeline of GTMUA Dissolution & Gaslighting extravaganza attempting to sell our Sewer*, Gloucester Township Observer, YOU TUBE (Dec. 9, 2024), available at: <https://www.youtube.com/watch?v=Hea6LfuaA6k&t=332s>. Notably, that episode has obtained over 1,000 views, substantial for citizen-run local news coverage and commentary.

private matters, etc., as alleged by the Complaint, one wonders why the Complainant waited a year to lodge it. It does none of the above, and is simply without merit.

The second statement which the Complainant takes issue with concerns Respondent's March 2025 podcast description of the Complainant as "creepy." The comment therein is rather short and is made in connection with the Complainant's role as Council President and his inconsistent policy that certain residents provide their residential addresses prior to addressing the council to merit a response to any questions posed by the public. Specifically, it arose based on speculation that the Complainant was Googling addresses to confirm whether a resident lived there such that they merited a response by the Township Council. A reasonable person may in fact infer under the facts and circumstances known to the community that such conduct, if true, is "creepy."⁷

Just like the first comment in May 2024, this March 2025 podcast coverage and commentary is made in the purview of Complainant's role as a public actor, and Respondent's role as a citizen-journalist and podcaster, on a matter of public concern in connection with ongoing controversy surrounding the council's transparency and accountability, on the heels of a contentious public referendum of questionable origin and purpose, and following the Respondent's electoral announcement for higher office, an office held by a longtime incumbent who has worked closely with the Complainant.

More, this second comment did not disclose confidential information, and, if this matter is not dismissed for want of probable cause or otherwise, and progresses through factual investigation, the record will reveal a local environment in which fear of retaliation and silencing is common, and relatedly in which public corruption is at the center of the public debate.⁸ Such controversy and corruption is no doubt

⁷ The Merriam-Webster Dictionary defines "creepy" as 1) producing a nervous shivery apprehension; 2) of, relating, to or being a creep: annoyingly unpleasant. See Definition, Merriam-Webster Dictionary, *available at*: <https://www.merriam-webster.com/dictionary/creepy> (last accessed May 20, 2025).

⁸ A glimpse of the public criticism of the accountability and transparency of the town council is publicly available, in public comments to a January 7, 2025 Facebook post by Gloucester Township, New Jersey, upon the swearing in of local officials at the township's annual reorganization meeting. *See* Gloucester Township Facebook post and related comments (Jan. 7, 2025), *available at*: <https://www.facebook.com/gloucestertownship/posts/on-thursday-january-2-2025-gloucester-townships-council-president-orlando-mercad/999778338844125/> (last accessed May 20, 2025), and on file. ("Integrity, dedication and a strong sense of collaboration???? What a joke!!!") ("They do not even try to hide the corruption.")

worsened by the public outcry against the manner in which the Complainant went about proposing the privatization issue to the public, allowing the measure to pass without advanced notice upon First Reading by the Township Council, worsened by ongoing lack of transparency about the process or the implications of the proposal, catalyzing in an overwhelming rejection of the Complainant's recent privatization effort.

Taking together the facts and allegations, the Complaint should be dismissed for want of probable cause which is found when "the facts and circumstances presented in the complaint and written statement" would "lead a reasonable person to believe that the Act has been violated." N.J.A.C. 6A:28-9.7.

RESPONSE AND ANSWER TO STATEMENTS OF SPECIFIC FACTS

ASSERTED IN COMPLAINT IN SUPPORT OF THE ALLEGATIONS:

Respondent herein responds and answers the portion of the Complaint wherein Complainant describes "Statement of specific facts in support of allegations" and related reasons to support violations of the Code of Ethics, (Complaint, pages 2-4.)

The Complainant bears the burden of proof, pursuant to N.J.A.C. 6A:28-6.4 to factually establish a violation of the Code of Ethics. The Complainant has failed to offer specific facts or arguments that support his burden of proof that the Act has been violated, as required by N.J.A.C. 6A:28-6.3, – 6.4. Rather, what is set forth in the Complaint is two sets of three numbered statements, which are meant to challenge two of Respondent's podcast commentaries, each of which purportedly violates three provisions of the Ethics Code, NJSA 18A:12-24.1(f), –(g), and –(i). These generalized statements lack the specificity required. Nonetheless, Respondent answers each in turn below, and to avoid duplication, offers a general response for incorporation within each specific response.

A. Statements in connection with the March 3, 2025 Podcast.

The Complainant focuses on a less-than-one-minute excerpt from the March 3, 2025 Podcast (time stamp 1:25:16 – 1:26:08). However, the podcast reveals that the

("While they talk about a 'commitment to serving the residents with integrity, dedication, and collaboration,' the reality was that shortly after these pictures were taken, council voted to approve new rules to limit public participation at the meetings – one of the most important aspects of democracy. On top of that, they introduced subjective rules to control the public's behavior, with themselves as the sole judges of what is acceptable. Meanwhile, no rules exist to address their own behavior toward the public.").

comments clearly relate to longer discourse of the municipality's public spending and borrowing in connection with the Township Council's dissolution of the MUA (time stamp 1:05), then a critique of the conduct of the council meetings and the need for dialogue and debate (time stamp 1:09), then the Complainant's role and conduct as Council President (time stamp 1:14:50), and finally Complainant's efforts to insist that residents who raise concerns to the council first provide their residential address (time stamp 1:19:15). A wider view of the clip in question is thus warranted for context.

a. Specific Responses

1. Respondent admits that he is a known critic of Mr. Mercado, but denies the Complainant's descriptor that he is a known "political" critic of him, due to its vagueness. Respondent is a citizen-journalist and member of the nonpartisan Board of Education, who is running for Mayor unaffiliated from political parties. Complainant is a twenty-year Township Council member and Council President who spearheaded a highly contentious effort to first dissolve and then privatize, pursuant to its dissolution, a municipal utility. The proposal was so contentious that the voters overwhelmingly rejected it by a referendum vote of over 80%. Further, there is a strong, increasing sense of community frustration in connection with a lack of transparency, accountability, or democratic process, resulting in a perceived culture of soft and hard corruption. Moreover, the Respondent's viewpoint is not unique such as to suggest some personal vendetta, but rather concerns general democracy and fairness values, in connection with Complainant's public actor duties and matters of public concern.
2. Respondent admits that he agreed with his co-host's description of the Complainant's behavior as "creepy." Respondent admits that others have acknowledged such behavior to him but denies offering further commentary as to who those people are or the precise nature of their complaints. Indeed, the Complainant's behavior at issue is publicly known, and publicly criticized, and personally known to the Respondent outside of his duties on the Board of Education. Within the podcast segment itself, the cohosts offers commentary on concerns raised by the public during a Township Council meeting, segments of which are replayed and examined during the podcast. Those concerns, as depicted during the podcast, relate to Complainant's residency inquiries and his public actor behavior as Council President to inconsistently insist that certain residents posing questions or comments to the council offer their residential address, which Complainant appears to then Google to verify. The

policy or practice, albeit inconsistent, suggests that the Township Council will not answer questions from the public unless a residence is provided and/or verified. A reasonable person would find such inconsistent behavior qualifies as “creepy” (defined in part by Webster Dictionary as “annoyingly unpleasant,” *supra* n. 7), particularly the independent verification aspect.

3. Respondent denies that his comments are “inflammatory” and “not supportive and protective of Mr. Mercado’s proper performance of his duties.” No further evidence or explanation is offered by the Complainant with specificity as to how the comments impede his HR duties in connection with his contract with the Gloucester Township Board of Education.

b. General Responses for incorporation above to avoid duplication.

The purpose of the School Ethics Act is to entrust local boards of education with the respect and confidence of the people, and to maintain the public’s trust and avoid a justifiable impression among the public that such trust is being violated. N.J.S.A. 18A:12-22(a).

The Complainant takes generalized issue with Respondent’s criticism, “creepy” descriptor, and “inflammatory comments,” however fails to establish how a reasonable person might connect those comments with a violation of the Act. Indeed, the Respondent *has* entrusted the trust of the public through his journalistic coverage of local events, and related advocacy surrounding the referendum vote, as illustrated by the public’s *overwhelming* 80% vote against privatization of the sewer system. Notably, the effort spearheaded by Respondent was *independent of* his roles and responsibilities as a representative of the Board of Education, and relates to the Complainant’s public duties as Township Council President, also *independent of* his separate HR schools contract. In other words, the school board is not implicated here, neither in form nor in function, although the parties’ shared connection to it is the but-for condition precedent of the underlying ethics complaint.

Although the statement of facts requires some degree of specificity, N.J.A.C. 6:28-6.3, – 6.4, the Complainant has failed to connect the generalized grievances asserted with the factual proofs necessary to assert a violation of N.J.S.A. 18A:12-24.1:

- Subpart (f) in furtherance of some special interest group in adherence to a political party or cause, or some untoward benefit that the Respondent gained by use of the schools as a leverage. Here, the Respondent is an Unaffiliated voter, and has issued public statements as to why he is running for Mayor unaffiliated with any political party. See *supra* n. 5 and supporting text. Moreover, there has been no change as to Respondent's coverage of the issue since the announcement of his candidacy, or since he first began to report the breaking news on his podcast. There is nothing to privately gain here, nor any alleged with specificity.
- Subpart (g) regarding the disclosure of nonpublic or confidential information or some inaccuracy beyond a "reasonable mistake or personal opinion or [] not attributable to developing circumstances." Here, the Complainant has not offered facts which connect the Respondent's statements with their school responsibilities, nor reference to characteristics or behaviors not already in the public domain. To the extent that some inaccuracy was shown, it is subject to Respondent's opinion in connection with the Complainant's public actor duties on matters of public concern relevant to his role on the Township Council.
- Subpart (i) regarding "deliberate action that resulted in undermining, opposing, compromising or harming school personnel in the proper performance of their duties." Here, Complainant has not attested to what duties or what actual harm the public comments concerning his Town Council Presidency impede on his private employment contract with the school, nor how such actions are deliberate to undermine those school duties. Only a generalized statement is offered which mimics the language of the code without actual proofs or substantiated allegations.

That Complainant has some employment contract with the schools should not trump and shield him from media or other scrutiny for his public actor behavior as Township Council President. An assertion otherwise circumvents the purpose of the School Ethics Act, and indeed its application here as a sword would be violative of Respondent's First Amendment rights.

B. Statements in connection with the May 20, 2024 Podcast.

The Complainant focuses on a less-than-one-minute excerpt (time stamp 3:04 – 3:58) from a year-old podcast in which the co-host states that Mr. Mercado was not at the Council meeting that evening, to which Respondent explained that he was at the Board of Education meeting instead due to his upcoming contract being up for a vote. Nothing substantively more is offered in this plain and straightforward

statement of the Complainant's whereabouts and some speculation about the Complainant's obvious and understandable motive to attend the Board of Education meeting. The contents of the podcast speak for themselves, and the tone of Respondent's casual response is best understood by listening to the audio segment itself. It is noteworthy that Respondent repeatedly and flatly refused to respond to a question posed by his cohost about whether it was "weird" or "not normal" that Mr. Mercado was present at the Board of Education when his contract was up for a vote, (time stamp 2:49 – 4:20.) A wider view of the clip in question is thus warranted for context.

Further contextual explanation of the ongoing MUA controversy surrounding this Township Council meeting is offered in the Background section above, *supra* page 3.

a. Specific Responses

1. Respondent admits that Mr. Mercado is a contracted employee in the school district. Respondent admits that Mr. Mercado's position is not a tenured position, but further notes that his position has been maintained for approximately ten years or more. Respondent admits that Mr. Mercado is not covered by any bargaining unit. Respondent admits that Mr. Mercado's reappointment is recommended by the Superintendent of Schools and subject to Board approval on an annual basis. Respondent denies that his mention of Mr. Mercado's contract during the podcast was violative of the Code of Ethics for Board of Education members; Mr. Mercado's presence at a public Board of Education meeting is not confidential or privileged, nor is the fact that his contract with a public entity is being reviewed. The relevant regular meeting agenda, which is publicly available,⁹ dedicates in Point 6.6L the board's approval of the Superintendent's multiple recommendations for employment of staff for the 2024-2025 school year. It further reflects on page 11 therein Respondent's approval of Item 6.6L, i.e., the Complainant's ongoing tenure.
2. The statement asserted by Complainant here is a copy and paste of his first statement above, (No. 1, *supra* page 6). Thus, Respondent incorporates by

⁹ The Gloucester Township Board of Education May 13, 2024 Regular Meeting Agenda is publicly available online: <https://www.gloucestertownshipschools.org/documents/school-board/agendas-%26-minutes/2023-2024-agenda-%26-minutes/649936> (last accessed May 20, 2025).

reference his specific response above here, as well as his general response to the first set.

3. The statement asserted by Complainant here is a copy and paste of his third statement above, (No. 3, *supra* page 7). Thus, Respondent incorporates by reference his specific response above here, as well as his general response to the first set.

b. General Responses

The Complainant takes generalized issue with Respondent's nonchalant explanation of his public whereabouts an evening in which the schedules overlapped for the public Township Council and Board of Education meetings, his "political" criticism of the Complainant, and his general "inflammatory comments" that are purportedly not supportive and protective of the Complainant's "proper performance of his duties" in connection with the schools. No reasonable person would find a violation of the Act based on Respondent's comments and demeanor. The integrity or public confidence in the Board of Education is not implicated, neither in form nor in function.

Although the statement of facts requires some degree of specificity, N.J.A.C. 6:28-6.3, – 6.4, the Complainant has failed to connect the generalized grievances asserted with the factual proofs necessary to assert a violation of N.J.S.A. 18A:12-24.1:

- Subpart (f) in furtherance of some special interest group in adherence to a political party or cause, or some untoward benefit that the Respondent gained by use of the schools as a leverage. There is nothing to privately gain here, nor any alleged with specificity. More, the description concerning the Respondent's "political" grievances concerning Mr. Mercardo is vague and without merit for the reasons asserted in the first set above, *supra* pages 7-8.
- Subpart (g) regarding the disclosure of nonpublic or confidential information or some inaccuracy beyond a "reasonable mistake or personal opinion or [] not attributable to developing circumstances." Here, the Respondent has not offered any nonpublic or confidential information. Rather, the Complainant's appearance at a public Board of Education meeting is not under cover, nor are the matters on the Agenda, which are publicly available online. Complainant has not offered facts which connect the Respondent's purported impugment of his school responsibilities, nor reference to characteristics or behaviors not

already in the public domain. To the extent that some inaccuracy was shown, it is subject to Respondent's personal opinion of developing circumstances regarding public presence at another public function.

- Subpart (i) regarding "deliberate action that resulted in undermining, opposing, compromising or harming school personnel in the proper performance of their duties." Here, the Complainant has not attested to what duties or what actual harm arises from the public comments concerning his public presence at a public Board of Education meeting, or the motivations of it to ensure approval of his contract, or how such statements are deliberate to undermine his school duties. Only a generalized statement is offered which mimics the language of the code without actual proofs or substantiated allegations.

That the Complainant has some employment contract with the schools should not trump and shield him from media or other commentary for his public actor behavior as Township Council President, which was the sole focus of the podcast – his absence from a council meeting. An assertion otherwise circumvents the purpose of the School Ethics Act; indeed, its application here as a sword would be violative of the Respondent's First Amendment rights.

For the reasons stated above, the Complaint's contentions with both podcast statements must be dismissed for want of probable cause. Taken independently and together, concerning the totality of the underlying circumstances of the contentious local politic, the role of the Complainant as Township President, the public service of the Respondent as a citizen-journalist, and the timing of the Complaint lodged in connection with the Respondent's bid for Mayor, no reasonable person would find a violation of the School Ethics Act. Indeed, the duties in connection with the school are scanty if at all mentioned here, and if they are, they are tangential to the overall issues in the town, and appear simply leveraged as a means to file this complaint.

Respondent believes that the Complaint has been lodged to upset his current bid for mayoral office, a bid for office which will heat up following the primary ahead of the general election. Respondent expressly reserves the right to assert frivolousness and related remedies should ongoing litigation proceed in this matter pursuant to N.J.S.A. 18A:12-29(9)(e) and N.J.S.A. 2A:15-59.1. See e.g., Bove v. Akpharma Inc., 460 N.J. Super 123, 152 (App. Div. July 2019) ("Of course, litigation may become frivolous, and therefore sanctionable, by continued litigation over a meritless claim, even if the initial pleading was not frivolous or brought in bad faith.") (internal citations and references omitted).

AFFIRMATIVE DEFENSES

1. The Code of Ethics, as applied to the facts and circumstances in the underlying actions here, is violative of the New Jersey's Constitution right to freedom of expression.

New Jersey's Constitution "guarantees a broad affirmative right to free speech." Dublirer v. 2000 Linwood Ave. Owners, Inc., 220 N.J. 71, 78 (2014). Article I, Paragraph 6 provides that "[e]very person may freely speak, write and publish his sentiments on all subjects, being responsible for the abuse of that right. No law shall be passed to restrain or abridge the liberty of speech or of the press." N.J. Const. art. I, ¶ 6. That language has been described as "broader than practically all others in the nation." Green Party v. Hartz Mountain Indus., Inc., 164 N.J. 127, 145 (2000).

It is well established that the New Jersey Constitution affords greater protection than federal law in certain areas relating to free speech, although it is generally interpreted as co-extensive with the First Amendment. E & J Equities, LLC v. Bd. of Adjustment of Franklin, 226 N.J. 549, 568 (2016) (quoting Township of Pennsauken v. Schad, 160 N.J. 156, 176 (1999)).

To that extent, it has been recognized that "overbroad laws 'may deter or "chill" constitutionally protected speech[.]'" United States v. Hansen, 599 U.S. 762, 769-70 (2023) (quoting Virginia v. Hicks, 539 U.S. 113, 119 (2003)); State v. Hill, 256 N.J. 266, 282-83 (2024). In those situations, "would-be speakers [may] remain silent," and "society" would then "lose their contributions to the 'marketplace of ideas.'" Hansen, 599 U.S. at 770 (quoting Hicks, 539 U.S. at 119). The overbreadth doctrine thus considers the extent of a law's "deterrent effect on legitimate expression." State v. Hoffman, 149 N.J. 564, 582 (1997) (internal quotation omitted).

The underlying circumstances here involve a committed citizen-journalist focused on local politics, and specifically affairs of the Township Council, offering news and commentary concerning a public actor who is the president of that governmental body, including exposing and chronicling unpopular efforts to dissolve and thereafter privatize a municipal utility, and the lack of transparency or accountability in the process by that governmental body.

Although defamation is not claimed here (nor could it reasonably be asserted), a heightened standard of actual malice applies in such scenarios, rather than the lower threshold of negligence, where the statement is about a public matter (as it is here) or where a public figure is involved (as it is here). See e.g., Rosenblatt v. Baer, 383 U.S. 75 (1966) (holding that a government employee, having or appearing to the public to have substantial responsibility for or control over the conduct of

governmental affairs, is a “public official” and therefore a defamatory comment about his official conduct is not recoverable unless actual malice is proven, i.e., that such comment is made with knowledge of its falsity or with reckless disregard of whether it is true or false.”).

The Complainant here is a public actor, and he cannot absolve himself simply because he has some general connection to the Board of Education, nor may he silence others utilizing their First Amendment rights to criticize him and/or matters of public concern. Should the School Ethics Act be applied in such a scenario, it would be void for overbreadth in violation of New Jersey’s broad free speech guarantees: “No law shall be passed to restrain or abridge the liberty of speech or of the press.” N.J. Const. art. I, ¶ 6. See also Usachenok v. State of New Jersey Department of Treasury et al., 257 N.J. 184 (2022) (invalidating part of a state regulation requiring witnesses and victims in workplace investigations to maintain confidentiality indefinitely and without clear exceptions as unconstitutionally overbroad under free speech protections).

WHEREFORE I, as RESPONDENT, request that the School Ethics Commission find no probable cause sufficient to establish a violation of the School Ethics Act, thereby dismissing this matter for lack of cause.

I certify as to the accuracy of this written statement.

Date: 5/20/25


Signature of Respondent Keith Gibbons