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Plaintiffs, *Pro Se*

BATCH 600  
CK MO CA CG AA  
CK/Rec # 456341  
Amount \$ 300-  
DATE 3-22-23

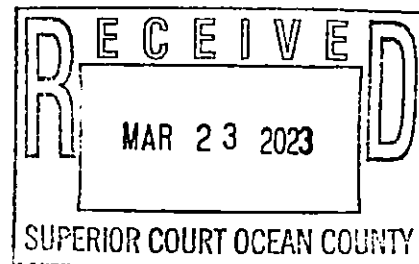
\_\_\_\_\_  
GAVIN ROZZI and REGINA DISCENZA  
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Plaintiffs,  
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:  
v.  
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:  
LACEY TOWNSHIP BOARD OF EDUCATION,  
SHAWN GIORDANO, HAROLD "SKIP"  
PETERS, LINDA DOWNING, FRANK  
PALINO, NICHOLAS MIRANDI, JOHN DOES  
1-100  
:  
:  
Defendants.  
\_\_\_\_\_

SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION: OCEAN COUNTY

DOCKET NO.:

Civil Action

**VERIFIED COMPLAINT  
IN LIEU OF PREROGATIVE WRITS**



**PRELIMINARY STATEMENT**

The New Jersey Open Public Meetings Act ("OPMA"), N.J.S.A. 10:4-6 et seq. guarantees that the public has the right to attend meetings of public bodies and to witness their decision-making process. The Lacey Township Board of Education, by, and at the direction of its then-president and majority of members, has egregiously violated this Act by engaging in "serial meetings" among 5 of 7 (count I) and 4 of 7 board members (count II) to plot and take official action against Plaintiffs and a private citizen using telephone, text message, and/or private email

communications that were intentionally kept secret from certain board members, and never formally disclosed to the public until it was first made public by way of an OPRA response in March, 2023.

By their own admission in newly made public certifications in support of their opposition to the related school ethics litigation, Defendants admit to holding a quorum of individual board members to gain their approval for politically motivated investigations of his opponents, using the board attorney for this improper purpose without ever seeking approval from the full board or discussing same during a legally constituted meeting of the board. These actions were never discussed at an official meeting and were never noted in any meeting minutes. And the remaining two board members were excluded from any such discussions. Yet they resulted in a taxpayer-funded investigation of Giordano, Downing, Palino & Peters' political opponents during an acrimonious campaign.

Defendants' conduct subverts the very essence of the OPMA, which is to ensure that the public is fully informed about the actions of public officials and their use of public funds. Plaintiffs seek a declaration that Defendants have violated OPMA through the former Board President's intentional subversion of the law by holding "serial meetings" which intentionally excluded the two board members not part of the majority in direct violation of N.J.S.A. 10:4-11 for the purpose of authorizing investigations by the Board Attorney to investigate Plaintiffs, as well as an injunction to prevent them from violating the Act in the future. This court must act to enforce OPMA and hold the Board and its members accountable for their actions, to prevent future violations and protect the public's right to know in Lacey Township.

### THE PARTIES

1. Plaintiff, Gavin Rozzi (“Plaintiff Rozzi”) is a resident of Forked River, New Jersey. During the 2019 election Rozzi ran as a candidate for the Lacey Township Board of Education race. He was a 2015 graduate of Lacey Township High School and has a Master of Science as well as a Bachelor of Arts degree from Stockton University. Rozzi is a data scientist, web developer & former Rutgers University professor who helped to develop the Master of Public Informatics graduate program, as well as serving as the founding data scientist of the Rutgers Urban & Civic Informatics Laboratory at Rutgers University while serving as a member of the dean’s administration. Rozzi is an expert in open government with a focus on New Jersey and has served as an expert witness in OPRA matters. He has previously developed a portfolio of award-winning journalistic work, including the OPRAmachine.com platform. He has regularly filed OPRA requests to investigate the activities of the Board and often speaks during the public comment portion of the Board’s meetings. During the 2019 election, Rozzi ran with two other candidates as a non-prevailing candidate.
2. Plaintiff, Regina Discenza (“Plaintiff Discenza”) is a former 2-term member of the Lacey Township Board of Education and has been a resident and taxpayer of Forked River, New Jersey since 1999. Mrs. Discenza holds a Bachelor of Arts degree in Criminal Justice from John Jay College in Manhattan, New York. Over the course of her 2 terms on the board Mrs. Discenza attained the highest levels of New Jersey School Boards Association (“NJSBA”) Board Member Academy training and received both Master Board Member and Certified Board Leader awards.

3. Defendant Lacey Township Board of Education (the "Board") is a public school district with principal offices at 200 Western Blvd. Lanoka Harbor, NJ 08734.
4. Defendant Shawn Giordano ("Giordano") is an individual who served as an elected official of the Lacey Township Board of Education and previously served as the President of same during some of the material events giving rise to this complaint. During the events giving rise to this lawsuit, Giordano was an unsuccessful candidate for his second reelection to his seat on the board and was part of an opposing campaign with Linda Downing, Donna McAvoy, and Harold "Skip" Peters.
5. Defendant Harold "Skip" Peters ("Peters") is an individual who was at all times relevant to this complaint an appointed and subsequently elected member of the Board. During the events giving rise to this lawsuit, Peters was a successful candidate for election to his seat on the board and was part of an opposing campaign.
6. Defendant Linda Downing ("Downing") is an individual who was at all times relevant to this complaint an elected member of the Board. During the events giving rise to this lawsuit, Downing was a successful candidate for reelection to her seat on the board and was part of an opposing campaign. Ms. Downing is currently serving her 10th term of office (30 years).
7. Defendant Nicholas Mirandi ("Mirandi") is an individual who was at all times relevant to this complaint an elected member of the Board.
8. Defendant Frank Palino ("Palino") is an individual who was at all times relevant to this complaint an appointed /elected member of the Board. At public meetings of the Board, Mr. Palino has regularly referred to members of the public who speak during the public

comment portions of the meeting, including Plaintiffs, as “The Entourage” from his position on the dais as a Board member and board president.

9. Sonia Marchitello (“Marchitello”) is an individual who was at all times relevant to this complaint a resident and taxpayer of Lacey Township and served as a candidate in the 2019 Board elections. Marchitello ran on a ticket with Plaintiff Rozzi and Salvatore Armato. She was previously employed as a school nurse by the Board and regularly spoke at public meetings to address some of her concerns with the school district’s actions.
10. Christopher Supsie (“Supsie” or the “Board Attorney”) is an individual who was at all times relevant to this complaint the Board Attorney for the Defendant Board of Education. Supsie and his firm no longer serve as legal counsel to the Board.
11. Robert Riggs (“Riggs”) is an individual who was at all times relevant to this complaint a duly elected member of the Board. Riggs was not affiliated with either the Plaintiffs’ political campaigns, or the campaigns of Defendants. Despite Riggs’ neutrality, he was still excluded from the meetings at issue in this case.
12. Defendants, John Does 1-100 are those as of yet unidentified individuals who may have acted in concert with, and at the direction of, or as part of a conspiracy orchestrated by the Defendants to knowingly, intentionally, and/or recklessly violate the Open Public Meetings Act and other relevant laws during the events giving rise to Plaintiffs’ causes of action. Their identities are currently unknown to Plaintiffs, but are believed to have participated in the violations of OPMA alleged herein.

### FACTUAL AVERMENTS

#### **Defendants Have Held Clandestine “Serial Meetings” Among a Quorum of Board Members, Intentionally Excluding Those Unaffiliated With Their Political Faction**

13. During the period relevant to this Complaint, Defendants engaged in a pattern and practice of holding clandestine “serial meetings” in which they discussed and deliberated on public business, including the investigations of private citizen school board candidates Gavin Rozzi, Sonia Marchitello, and then-Board Member Regina Discenza, outside of the public purview, without the opportunity for public participation, and with intent to exclude Board members who were not members of their political faction from participating. These serial meetings constituted a clear and repeated violation of the Open Public Meetings Act (“OPMA”), N.J.S.A. 10:4-6 et seq.
14. Upon information and belief, the Defendants, acting in concert and collaboration with each other, intentionally held discussions outside of the public meetings regarding matters that should have been discussed and deliberated in public meetings. In these discussions, the Defendants discussed official business of the Board of Education, including but not limited to Board of Education appointments and personnel matters, in direct violation of the letter and spirit of New Jersey’ Open Public Meetings Act.
15. By their own admission, these discussions rose above and beyond simply polling members of the board individually or political caucus meetings among their group, which are outside of the scope of the present action or the law. These discussions included a significant majority of the Board and official action was taken, to wit, the Defendants’ authorization of Defendant Giordano to engage the Board Attorney to research Plaintiffs for matters outside the jurisdiction of the Board at taxpayer expense, while excluding the minority board members.

16. In the instant matter, it is crucial to highlight that during the elections, that board candidates were not considered "personnel" for the purpose of the Board Attorney's investigation although that appeared on the district's legal bill. At that time, these individuals were private citizens exercising their democratic rights to seek public office. The investigation of these candidates by the board attorney falls outside the scope of the Open Public Meetings Act, which is designed to ensure transparency in the public decision-making process. Conducting such an investigation of private citizens, without proper disclosure or adherence to the Act's procedural requirements, constitutes a violation of the statute and undermines the public trust in the board's commitment to transparency, fiscal accountability and open governance.
17. Defendant Giordano has contended in the related school ethics litigation that these actions were acceptable because the Board later ratified the Board Attorney's invoice ratifying the charges in question (See Exhibit B at page 6). This however, is manifestly incorrect, as any actions taken in violation of OPMA are voidable by this Court.
18. Furthermore, any actions to determine the eligibility of a candidate to serve on a local boards of education are outside the scope of the official duties of either the Board President or Board Attorney. Any such eligibility determinations can only be made by the New Jersey Department of Education or their designee.
19. Additionally, it is essential to underscore that subjecting private citizens, in their capacity as board candidates, to an investigation by the board attorney, is an unwarranted intrusion into their private lives. This action not only violates the principles of the Open Public Meetings Act, but also encroaches upon the individual civil rights and liberties of these

candidates. The purpose of the Act is to foster openness, accountability, and public participation in the decision-making process of public bodies, not to facilitate the unauthorized scrutiny of private citizens vying for public office. This improper conduct by the board attorney raises serious concerns about the Lacey Township Board of Education's commitment to upholding the fundamental democratic values that the Open Public Meetings Act seeks to protect. And even if assuming, *arguendo*, that Plaintiffs were personnel of the district as represented by the Board Attorney, no notice was ever issued indicating their employment would be discussed at a public meeting as required by Rice v. Union Cty. Reg'l High Sch. Bd. of Educ. 155 N.J. Super. 64 (App. Div. 1977) 382 A.2d 386.

20. Authorizing the investigation of board candidates through clandestine serial meetings is a clear violation of the Open Public Meetings Act (OPMA). Serial meetings, also known as "walking quorums" or "daisy chain meetings," occur when members of a public body communicate with one another indirectly, often through intermediaries or a series of individual conversations, to discuss or deliberate on public business, thereby circumventing the requirements of the Act. Here, Defendant Giordano has readily admitted to serving as the intermediary who convened the said meetings.
21. Under OPMA, public bodies are mandated to conduct their business in open and transparent meetings, providing proper notice and allowing public access to their deliberations. By engaging in serial meetings to authorize the board attorney's investigations, the Lacey Township Board of Education failed to comply with the Act's provisions, effectively excluding the public from participating in or being informed of the decision-making process. This secretive conduct not only undermines the very essence of



the OPMA but also erodes public trust in the integrity and transparency of the board's operations. Consequently, the use of serial meetings to authorize the investigation of private citizens running for office is illegal under the OPMA and further demonstrates the board's disregard for its legal obligations and the democratic principles it is required to uphold.

22. The “serial meetings” were arranged and coordinated by Defendant Giordano, who communicated individually with other members of the Board, including Defendants Downing, Palino, Peters, and Mirandi, to discuss the investigations and other Board business outside of public meetings. Defendant Giordano did not contact or receive the assent of all Board members, including Robert Riggs & Plaintiff Discenza, to engage in private discussions outside of public meetings regarding investigations of private citizens.

(See Certification of Regina Discenza, ¶ 3 and ¶ 10)

23. At no time were the secret serial meetings announced, noticed, or conducted in accordance with the requirements of the OPMA. *Id.*
24. At no time did Defendants provide the public or Plaintiffs with an opportunity to observe, hear, or comment on the discussions that occurred, or the decisions that were deliberated on during these serial meetings that excluded certain board members. *Id.*
25. No formal vote of the Board was ever taken to authorize the serial meetings, and no deliberations ever took place during any legally constituted meeting of the Board. *Id.*
26. The “serial meetings” were intentionally conducted by Defendants to avoid the requirements of the OPMA and to prevent public scrutiny and input, as well as input of the full board, and directly contravened guidance issued by the New Jersey School Board

Association, of which the Board is affiliated with, regarding school board compliance with OPMA.

27. The “serial meetings” were conducted by Defendants in deliberate disregard of the rights of Plaintiffs and other members of the public to have full and open access to the decision-making process of the Board, as well as the two excluded Board members to participate in the same by way of their intentional exclusion of Plaintiff Discenza and Riggs. *Id.* at ¶ 3.

28. The “serial meetings” convened by Defendants were conducted to discuss and deliberate on matters of public concern, including the investigations of private citizens by the Board Attorney, member conduct, and other Board business. The meetings resulted in official action of the Board by way of Defendants’ officially providing assent for contacting the Board Attorney to investigate Plaintiffs, as Defendants admitted to the same in their respective certifications in the related school ethics litigation.

29. Defendants’ conduct deprived Plaintiffs and members of the public of the right to know about and participate in the Board’s decision-making process, and is thus in violation of the OPMA.

30. As a result of Defendants’ conduct, Plaintiffs have suffered damages, including but not limited to the violation of their rights under the OPMA and their right to participate in the Board’s decision-making process.

**Defendants Admit to Conduct Violating OPMA in Related School Ethics Litigation Before the New Jersey Office of Administrative Law**

31. By way of important background, Plaintiffs filed complaints against Defendant Shawn Giordano before the School Ethics Commission on or about December 2019 and January, 2020. (See Certification of Gavin Rozzi, ¶ 5 and ¶ 7)

32. The School Ethics Commission (“SEC”) issued a Probable Cause Notice in connection with Plaintiffs’ complaint against Defendant Giordano in connection with his politically motivated investigations of his political opponents using the Board Attorney on or about June 1<sup>st</sup>, 2020. *Id.* at ¶ 7.
33. Pursuant to N.J.A.C. 6A:28-10.7(b)(1), the Plaintiffs were removed as parties from their respective school ethics complaints on June 1<sup>st</sup>, 2020, and the deputy attorney general for the School Ethics Commission were designated to prosecute the Plaintiffs’ ethics complaints before the New Jersey Office of Administrative Law (“OAL”) as a contested matter. *Id.* at ¶ 8.
34. Similarly, a Deputy Attorney General was also appointed to prosecute Defendant Giordano’s ethics complaint against Plaintiff Discenza on the same day.
35. As a result of the Plaintiffs being dropped as the Complainants from their respective ethics matters before the SEC upon their Complaint’s transmittal to OAL, they no longer received any information as to the pleadings or docket entries filed in the resulting contested OAL matter arising from their respective ethics complaints and responsive pleadings. Plaintiffs have since had no access to information regarding the disposition of their ethics complaints since the SEC took over the prosecution of their respective matters in 2020. *Id.* at ¶ 9.
36. Plaintiffs recently made Open Public Records Act (“OPRA”) requests to OAL to obtain copies of the relevant pleadings that may have been filed in the two cases captioned In the Matter of Shawn Giordano to gain a better understanding as to the progression of their respective complaints that were taken over by the SEC. (See Certification of Gavin Rozzi, ¶ 4 and Certification of Regina Discenza ¶ 9)

37. Plaintiff Discenza has also certified that she received documents from her attorney in the related ethics matter containing the certifications of the Defendants on or about March 7th 2023 following the issuance of ALJ Pelios' initial decision. (See Certification of Regina Discenza ¶ 9)

### The Discenza Ethics Certifications

38. Defendants recently admitted to the conduct giving rise to this action in certifications that they recently made public as part of the related school ethics litigation involving Defendant Giordano and Plaintiff Discenza. (See Exhibit A, Exhibit B, *supra*)

39. The first set of certifications were filed with the Office of Administrative Law on March 7, 2023 by Shawn Giordano, Linda Downing, Harold "Skip" Peters, Nicholas Mirandi, and Frank Palino as part of Defendant Giordano's exceptions filed by attorney Christopher Dasti in response to the Initial Decision issued by ALJ Elia Pelios that was filed In the Matter of Shawn Giordano, Lacey Township Board of Education, OAL Docket No. EEC 10952-2020, Agency Docket No. C04-20, which arose from an ethics complaint filed by Plaintiff Discenza against Defendant Giordano.

40. The certifications stated, among other things, that the Defendant Board Members Downing, Palino, Peters & Mirandi all had discussions among themselves and with Mr. Giordano outside of the public meetings regarding matters that should have been discussed and deliberated at public meetings. A true and correct copy of the Certifications filed as part of Giordano's exceptions contesting the initial decision is attached as "Exhibit A."

41. Defendant Downing has certified as follows (emphasis added):

**"However, in this matter, Mr. Giordano had individual discussions between myself, and other Board Members, Frank Palino, Nick Mirandi, and Harold "Skip" Peters,**

and discussed the disturbing behavior of Ms. Discenza. **The five of us in separate conversations with Mr. Giordano recommended and agreed that he contact the School Board Attorney so the matter could be investigated and researched.**" (See Exhibit A).

42. During those discussions, each of the Defendants recommended and agreed that Defendant Giordano contact the School Board Attorney Christopher Supsie to research and investigate the conduct of Plaintiff Discenza. (See Exhibit A at First Downing Cert., ¶ 6; First Mirandi Cert., ¶ 6; Palino Cert., ¶ 6; First Peters Cert., ¶ 6.)
43. Notably, the certifications documenting these conversations related to Plaintiff Discenza were filed *after* the ALJ's initial summary decision was rendered and were a transparent attempt to cover up the illegal conduct of the Board and its former president after Giordano was found liable by ALJ Pelios.
44. These certifications only recently disclosed the existence of the serial meetings that took place during 2019, which up until they were disclosed to Plaintiffs by way of the attorney document release and OPRA response, were concealed from the public by way of Defendants' actions.
45. These certifications provide incontrovertible evidence that the Defendants engaged in private discussions outside of the public eye, in violation of the OPMA, to authorize the investigation of a fellow Board member as a result of her support for an opposing slate of candidates during the 2019 election. The certifications show a concerted effort by the Defendants to circumvent the transparency and accountability mandated by the OPMA, and to engage in conduct that is inconsistent with the principles of good governance.

### **The Rozzi Ethics Certifications**

46. On or about March 8th, 2023, Plaintiff Rozzi obtained information as to the contents of the Motion for Summary Judgment filed by Defendant Giordano's attorney in the first ethics matter when he was contacted by Plaintiff Discenza, who shared the documents received from her attorney and OPRA request on or about the same day (See Certification of Gavin Rozzi, ¶ 3). Rozzi's case was listed as In the Matter of Shawn Giordano, Lacey Township Board of Education, OAL Docket No. EEC 06739-2020, Agency Docket No. C73-19, C04-20 and is before ALJ Carl Buck, III of the OAL.
47. The motion papers received by Plaintiff Discenza and provided to Plaintiff Rozzi during that week contained a second set of certifications from Defendants Downing, Peters & Mirandi in support of Defendant Giordano's motion for summary judgment in his favor, filed on or about August 4th, 2022 and were made public on March 8th, 2023. A true and correct copy of the second set of certifications is attached as "Exhibit B."
48. The Certifications filed in the ethics case regarding Plaintiff Rozzi attempted to retroactively lend support to Defendant Giordano's unilateral desire to investigate Plaintiff Rozzi using the Board Attorney.
49. The certifications signed by Defendants Downing, Peters & Mirandi in opposition to the school ethics litigation commenced by Plaintiff Rozzi and Sonia Marchitello all contained the following statement:
- "In my role as Board Member as well as my capacity as an active and involved citizen of Lacey Township, I was aware of Complainant [Plaintiff Rozzi]'s status as a journalist embroiled in local political matters, specifically with respect to the Board and Lacey Township School District, as well as Complainant's penchant for disclosing information to the public and making OPRA requests in pursuit of his journalistic endeavors. During this time frame (I do not recall the exact date), I spoke with Respondent/Board President and I authorized him to engage the Board Attorney to perform research as to whether there were any School Ethics Commission Decisions which would have an impact upon

whether a local reporter would be conflicted from being appointed by the Board to fill a vacancy of the Board.”

50. Defendants admit to holding a “serial meeting” on or about August 2019 to authorize action against Plaintiff Rozzi by repeatedly speaking among a majority of board members to include Defendants Giordano, Downing, Mirandi & Peters.
51. Because the “serial meetings” utilizing private email, text message and telephone capabilities were concealed from the public, and only made public as a proximate and direct result of Plaintiffs’ OPRA requests to OAL regarding the school ethics litigation, the 45-day statute of limitations for commencing an OPMA summary action was tolled upon Plaintiffs obtaining the OPRA records that disclosed Defendants’ actions, as well as Defendant Giordano’s exceptions on or about March 7th, and March 8th, 2023, respectively. Therefore this complaint is timely filed, as there was no other way for Plaintiffs to learn of this conduct that occurred in 2019 until the creation of / obtaining the certifications documenting the conduct at issue in this lawsuit.
52. Taken together with those issued during the ethics case involving Plaintiff Discenza, these certifications demonstrate that Downing, Giordano, Peters & Mirandi twice admitted to participating in “serial meetings” with a majority of the Board regarding at least two separate items of business currently known to Plaintiffs, where they took official action against Plaintiffs, demonstrating a pattern and practice of knowing and willful OPMA violations by the Defendants.

#### **JURISDICTION & VENUE**

53. Venue is properly laid in this vicinage because Plaintiffs and Defendants are both residents of, and current and former elected officials, as well as a public body located within Lacey Township, Ocean County.

**COUNT I**

**Regina Discenza & Gavin Rozzi vs. Lacey Township Board of Education, Shawn Giordano, Harold "Skip" Peters, Linda Downing, Frank Palino and Nicholas Mirandi  
VIOLATION OF OPMA, N.J.S.A. 10:4-6 et seq.**

54. Plaintiffs restate and reincorporate by reference all previous paragraphs in this Complaint as if more fully set forth herein.

55. Defendants are a public body within the meaning of the Open Public Meetings Act ("OPMA"), N.J.S.A. 10:4-6 et seq.

56. N.J.S.A. 10:4-11 provides "No person or public body shall fail to invite a portion of its members to a meeting for the purpose of circumventing the provisions of this act."

57. Defendants circumvented the public meeting process by their own admission in certifications sent to Administrative Law Judge Pelios.

58. In their certifications, the board members admitted to conducting a "serial meeting," by communicating with one another through private emails, text messages, and phone calls, to deliberate on public business in a manner that allowed them to avoid the requirements of OPMA.

59. These actions were concealed from the public. Plaintiffs only became aware of these serial meetings after Defendants publicly admitted to them at the 11<sup>th</sup> hour in an attempt to retroactively justify Shawn Giordano's unilateral engagement of the Board Attorney Christopher Supsie to investigate Plaintiffs.

60. The board members' actions constitute a violation of OPMA and deprived Plaintiff and other members of the public of their rights under OPMA.



61. The actions authorized at the "serial meeting" were held to be illegal by ALJ Pelios because they served Defendant Giordano's personal agenda using school resources and the Defendants concealed it to cover up their illegal conduct.

### **COUNT II**

**Gavin Rozzi & Regina Discenza vs. Lacey Township Board of Education, Shawn Giordano, Harold "Skip" Peters, Linda Downing, Nicholas Mirandi**  
**VIOLATION OF OPMA, N.J.S.A. 10:4-6 et seq.**

62. Plaintiffs restate and reincorporate by reference all previous paragraphs in this Complaint as if more fully set forth herein.

63. Defendants are a public body within the meaning of the Open Public Meetings Act ("OPMA"), N.J.S.A. 10:4-6 et seq.

64. N.J.S.A. 10:4-11 provides "No person or public body shall fail to invite a portion of its members to a meeting for the purpose of circumventing the provisions of this act."

65. Defendants circumvented the public meeting process by their own admission in certifications sent to Administrative Law Judge Buck.

66. In their certifications, the board members admitted to conducting a "serial meeting," by communicating with one another through private emails, text messages, and phone calls, to deliberate on public business in a manner that allowed them to avoid the requirements of OPMA.

67. These actions were concealed from the public. Plaintiffs only became aware of these serial meetings after Defendants publicly admitted to them at the 11<sup>th</sup> hour in an attempt to retroactively justify Shawn Giordano's unilateral engagement of the Board Attorney to investigate Plaintiffs.

68. The board members' actions constitute a violation of OPMA and deprived Plaintiff and other members of the public of their rights under OPMA.

**COUNT III****Gavin Rozzi and Regina Discenza vs. Lacey Township Board of Education, Linda Downing,  
Frank Palino, Harold "Skip" Peters  
INJUNCTIVE RELIEF**

69. Plaintiffs incorporate by reference all prior allegations as if fully set forth herein.
70. Plaintiffs seek injunctive relief pursuant to N.J.S.A. 10:4-16 to prevent defendants from continuing to violate the OPMA.
71. Plaintiffs further allege that the Board's actions in this matter were part of a pattern and practice of violating the OPMA, as demonstrated by the sworn admissions made in certifications signed by Defendants in the ongoing litigation involving the Board in the school ethics complaints filed by Regina Discenza against Shawn Giordano (OAL Docket No. EEC 09731-2019, Docket No. C04-20) and Gavin Rozzi & Sonia Marchitello's consolidated complaint against Shawn Giordano (OAL Docket No. EEC 06739-2020, Docket No. C73-19, C02-20).
72. Defendants' continued violation of the OPMA will cause irreparable harm to the Plaintiffs and other members of the public who have a right to know about the deliberations, fiduciary responsibilities and actions of the Lacey Township Board of Education.
73. Plaintiffs have no adequate remedy at law.
74. Injunctive relief is necessary to prevent the defendants who are still serving on the Board from continuing to violate the OPMA, and to ensure that the public's right to know is safeguarded.

**COUNT IV**

**Gavin Rozzi and Regina Discenza vs. Lacey Township Board of Education, Shawn  
Giordano, Linda Downing, Frank Palino, Harold "Skip" Peters  
VIOLATION OF NEW JERSEY CIVIL RIGHTS ACT**

75. Plaintiff realleges and incorporates by reference each and every allegation contained in the introductory paragraphs of this Complaint.
76. Defendants' conduct violated the New Jersey Civil Rights Act (NJ CRA), N.J.S.A. 10:6-1 et seq. By selectively excluding board members from the decision-making process based on their political views, Defendants discriminated against Plaintiff and others who did not share Defendants' political views and with whom they had a negative political history.
77. Defendants' actions were in direct relation for Plaintiffs' making use of their substantive rights protected by the NJ CRA, namely their right to make public records requests under OPRA, freedom of speech as well as their participation in public meetings in accordance with OPMA.
78. Defendants' conduct interfered with Plaintiff's substantive rights secured by the Constitution and the laws of the State of New Jersey. Plaintiff was deprived of the opportunity to participate in the decision-making process of the Lacey Township Board of Education due to the secret communication and selective exclusion of board members who did not share the Defendants' political views.
79. Defendants' conduct entitles Plaintiff to injunctive relief, damages, costs, and reasonable attorneys' fees pursuant to N.J.S.A. 10:6-2.

**PRAYER FOR RELIEF**

**WHEREFORE**, Plaintiffs demand judgment against Defendants and prays that this Court enter the following relief:

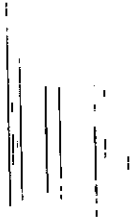
- A. Enter an Order to Show Cause requiring Defendants to appear before this Court and show cause why they should not be enjoined from violating OPMA;
- B. Enter an order finding that Defendants have violated OPMA;
- C. Enjoin Defendants from violating OPMA in the future;
- D. Order Defendants to make public the minutes of the meeting in question and any other meeting where OPMA has been violated;
- E. Invalidating the Board's surreptitious approval of former Board Attorney Christopher Supsie's legal bills for all investigations into the eligibility and /or public comments of Gavin Rozzi, Regina Discenza & Sonia Marchitello via serial meetings.
- F. Grant such other relief as this Court deems equitable and just.

**CERTIFICATION OF NO OTHER ACTIONS**

Pursuant to R. 4:5-1(b)(2), it is hereby stated that the matter in controversy is not the subject of any other action pending in any other court or of a pending arbitration proceeding to the best of our knowledge or belief. Also, to the best of our belief, no other action or arbitration proceeding is contemplated. Further, other than the parties set forth in this pleading, we know of no other parties that should be joined in the above action. In addition, we recognize the continuing obligation of each party to file and serve on all parties and the court an amended certification if there is a change in the facts stated in this original certification.

**CERTIFICATION PURSUANT TO R. 1:38-7(b)**

Plaintiffs hereby certify that all confidential personal identifiers have been redacted from documents now submitted to the court, and will be redacted from all documents submitted in the future in accordance with R. 1:38-7(b).



DocuSigned by:  
*Gavin Rozzi*  
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GAVIN ROZZI  
Plaintiff, *Pro Se*

DocuSigned by:  
*Regina Discenza*  
C985923B88C04B3...  
REGINA DISCENZA  
Plaintiff, *Pro Se*

Dated: 3/22/2023

**VERIFICATION OF GAVIN ROZZI**

I, Gavin Rozzi, do hereby verify the following statements on the following bases:

Paragraphs 47-51 are based on my personal knowledge.

The balance of the paragraphs are based upon information and belief, public records, and facts relayed to me by others or are assertions of law.

I certify that the foregoing statements made by me are true and correct to the best of my knowledge. I understand that if any of my statements are willfully false or misleading then I am subject to punishment.

DocuSigned by:  
*Gavin Rozzi*  
A2EB487D00E4414...  
GAVIN ROZZI  
Plaintiff, *Pro Se*

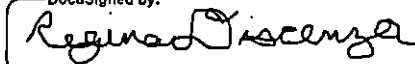
**VERIFICATION OF REGINA DISCENZA**

I, Regina Discenza do hereby verify the following statements on the following bases:

Paragraphs 13, 30, 36-37 and 42 are based on my personal knowledge.

The balance of the paragraphs are based upon information and belief, facts relayed to me by others, public records, or are assertions of law.

I certify that the foregoing statements made by me are true and correct to the best of my knowledge. I understand that if any of my statements are willfully false or misleading then I am subject to punishment.

DocuSigned by:  
  
C985923B08C04D3...  
REGINA DISCENZA  
Plaintiff, *Pro Se*

**Exhibit A**  
to  
the Verified Complaint of  
Gavin Rozzi and Regina Discenza

# DASTI ASSOCIATES

CHRISTOPHER J. DASTI, ESQ. [013802010]  
310 Lacey Road  
P.O. Box 779  
Forked River, New Jersey 08731  
609-549-8990

Attorneys for Respondent, Shawn Giordano

IN THE MATTER OF SHAWN GIORDANO  
LACEY TOWNSHIP BOARD OF  
EDUCATION, OCEAN COUNTY

OFFICE OF  
ADMINISTRATIVE LAW

DOCKET NO.: EEC 10952-2020  
AGENCY DOCKET. NO. C04-20

**CERTIFICATION OF  
LINDA A. DOWNING**

I, LINDA A. DOWNING, of full age hereby certify as follows:

1. At all times relevant herein, I was a Member of the Lacey Township Board of Education. I have full knowledge of the matters set forth herein.

2. I am aware of the school ethics charges filed by Regina Discenza against Shawn Giordano. I at one time was one of the respondents in companion complaint but have since been dismissed.

3. The remaining claims against Shawn Giordano relate to Discenza's claim that Mr. Giordano unilaterally used the services of the School Board Attorney to research and investigate her conduct.

4. The claims that Mr. Giordano unilaterally contacted the School Board Attorney for a personal reason is not true.

5. The School Board Policy 0174 permits Mr. Giordano as School Board President to contact the School Board Attorney to request legal services.

6. However, in this matter, Mr. Giordano had individual discussions between myself, and other Board Members, Frank Palino, Nick Mirandi, and Harold "Skip" Peters, and discussed the disturbing behavior of Ms. Discenza. The five of us in

DASTI & ASSOCIATES  
ATTORNEYS AT LAW

310 Lacey Road  
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Forked River, N.J. 08731



separate conversations with Mr. Giordano recommended and agreed that he contact the School Board Attorney so the matter could be investigated and researched.

7. Therefore, despite Ms. Discenza's assertions, Mr. Giordano did not act "unilaterally" to request research and/or a legal opinion from the School Board Attorney with regard to her conduct. The majority of the Board Members discussed the matter separately in different telephone calls with Mr. Giordano, and each other. At no time was a quorum present. However, it was in individual discussions that led to the ultimate recommendation for Mr. Giordano to contact the School Board Attorney.

8. Therefore, Mr. Giordano was not taking any private action, and he discussed the matter with other members of the Board individually and the consensus was to have the Board Attorney, Mr. Supsie research the matter.

9. Mr. Supsie's legal opinion and/or conclusions were shared with me.

10. I hereby 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.

Dated: March 6, 2023

By:   
LINDA A. DOWNING

DASTI & ASSOCIATES

ATTORNEYS AT LAW

310 Lacey Road  
P.O. Box 779  
Forked River, N.J. 08731

**DASTI & ASSOCIATES**

CHRISTOPHER J. DASTI, ESQ. [013802010]  
 310 Lacey Road  
 P.O. Box 779  
 Forked River, New Jersey 08731  
 609-549-8990

Attorneys for Respondent, Shawn Giordano

IN THE MATTER OF SHAWN GIORDANO  
 LACEY TOWNSHIP BOARD OF  
 EDUCATION, OCEAN COUNTY

OFFICE OF  
 ADMINISTRATIVE LAW

DOCKET NO.: EEC 10952-2020  
 AGENCY DOCKET. NO. C04-20

**CERTIFICATION OF  
 SHAWN GIORDANO**

I, SHAWN GIORDANO, of full age hereby certify as follows:

1. I am the Respondent herein and am fully aware of the facts concerning this matter.
2. I was the School Board President during 2019 which gave rise to allegations in this matter.
3. During the fall of 2019, it came to the School Board's attention the disturbing conduct by Board Member Regina Discenza. As a result of the conduct, the other members of the Board, Linda A. Downing, Skip Peters, Nick Mirandi,, and Frank Palino all discussed their amongst each other and also with me individually. During the timeframe of November, 2019, the individual Board members each communicated with me and recommended that I, as School Board President, contact the School Board Attorney Chris Supsie, Esq. and ask for him to research the matter and provide a legal opinion with regard to Ms. Discenza's conduct.
4. Pursuant to School Board Policy 0174, I as the Board President am designated contact person to request services from the School Board Attorney.

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5. After discussing the concerns with fellow Board Members, I contacted Mr. Supsie and asked him to research the disturbing conduct by Ms. Discenza.

6. Mr. Supsie researched the matter and provided his legal opinion which was shared with myself and the other Board members.

7. I hereby 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.

Dated: March 6, 2023

By:   
SHAWN GIORDANO

DASTI & ASSOCIATES

ATTORNEYS AT LAW

310 Lacey Road  
P.O. Box 779  
Forked River, N.J. 08731

# DASTI ASSOCIATES

CHRISTOPHER J. DASTI, ESQ. [013802010]  
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Attorneys for Respondent, Shawn Giordano

IN THE MATTER OF SHAWN GIORDANO  
LACEY TOWNSHIP BOARD OF  
EDUCATION, OCEAN COUNTY

OFFICE OF  
ADMINISTRATIVE LAW

DOCKET NO.: EEC 10952-2020  
AGENCY DOCKET. NO. C04-20

**CERTIFICATION OF  
NICHOLAS MIRANDI**

I, NICHOLAS MIRANDI, of full age hereby certify as follows:

1. At all times relevant herein, I was a Member of the Lacey Township Board of Education. I have full knowledge of the matters set forth herein.

2. I am aware of the school ethics charges filed by Regina Discenza against Shawn Giordano.

3. The remaining claims against Shawn Giordano relate to Discenza's claim that Mr. Giordano unilaterally used the services of the School Board Attorney to research and investigate her conduct.

4. The claims that Mr. Giordano unilaterally contacted the School Board Attorney for a personal reason is not true.

5. The School Board Policy 0174 permits Mr. Giordano as School Board President to contact the School Board Attorney to request legal services.

6. However, in this matter, Mr. Giordano had individual discussions between myself, and other Board Members, Linda Downing, Frank Palino, and Harold "Skip" Peters, and discussed the disturbing behavior of Ms. Discenza. The five of us in

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ATTORNEYS AT LAW

310 Lacey Road  
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Forked River, N.J. 08731

separate conversations with Mr. Giordano recommended and agreed that he contact the School Board Attorney so the matter could be investigated and researched.

7. Therefore, despite Ms. Discenza's assertions, Mr. Giordano did not act "unilaterally" to request research and/or a legal opinion from the School Board Attorney with regard to her conduct. The majority of the Board Members discussed the matter separately in different telephone calls with Mr. Giordano, and each other. At no time was a quorum present. However, it was in individual discussions that led to the ultimate recommendation for Mr. Giordano to contact the School Board Attorney.

8. Therefore, Mr. Giordano was not taking any private action, and he discussed the matter with other members of the Board individually and the consensus was to have the Board Attorney, Mr. Supsie research the matter.

9. Mr. Supsie's legal opinion and/or conclusions were shared with me.

10. I hereby 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.

Dated: March 6, 2023

By:   
NICHOLAS MIRANDI

DASTI & ASSOCIATES  
ATTORNEYS AT LAW  
310 Lacey Road  
P.O. Box 779  
Forked River, N.J. 08731

# DASTI ASSOCIATES

CHRISTOPHER J. DASTI, ESQ. [013802010]  
310 Lacey Road  
P.O. Box 779  
Forked River, New Jersey 08731  
609-549-8990

Attorneys for Respondent, Shawn Giordano

IN THE MATTER OF SHAWN GIORDANO  
LACEY TOWNSHIP BOARD OF  
EDUCATION, OCEAN COUNTY

OFFICE OF  
ADMINISTRATIVE LAW

DOCKET NO.: EEC 10952-2020  
AGENCY DOCKET. NO. C04-20

**CERTIFICATION OF  
FRANK PALINO**

I, FRANK PALINO, of full age hereby certify as follows:

1. At all times relevant herein, I was a Member of the Lacey Township Board of Education. I have full knowledge of the matters set forth herein.
2. I am aware of the school ethics charges filed by Regina Discenza against Shawn Giordano.
3. The remaining claims against Shawn Giordano relate to Discenza's claim that Mr. Giordano unilaterally used the services of the School Board Attorney to research and investigate her conduct.
4. The claims that Mr. Giordano unilaterally contacted the School Board Attorney for a personal reason is not true.
5. The School Board Policy 0174 permits Mr. Giordano as School Board President to contact the School Board Attorney to request legal services.
6. However, in this matter, Mr. Giordano had individual discussions between myself, and other Board Members, Linda Downing, Nick Mirandi, and Harold "Skip" Peters, and discussed the disturbing behavior of Ms. Discenza. The five of us in

DASTI & ASSOCIATES  
ATTORNEYS AT LAW

310 Lacey Road  
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Forked River, N.J. 08731

separate conversations with Mr. Giordano recommended and agreed that he contact the School Board Attorney so the matter could be investigated and researched.

7. Therefore, despite Ms. Discenza's assertions, Mr. Giordano did not act "unilaterally" to request research and/or a legal opinion from the School Board Attorney with regard to her conduct. The majority of the Board Members discussed the matter separately in different telephone calls with Mr. Giordano, and each other. At no time was a quorum present. However, it was in individual discussions that led to the ultimate recommendation for Mr. Giordano to contact the School Board Attorney.

8. Therefore, Mr. Giordano was not taking any private action, and he discussed the matter with other members of the Board individually and the consensus was to have the Board Attorney, Mr. Supsie research the matter.

9. Mr. Supsie's legal opinion and/or conclusions were shared with me.

10. I hereby 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.

Dated: March 6, 2023

By:   
FRANK PALINO

DASTI & ASSOCIATES

ATTORNEYS AT LAW

310 Lacey Road  
P.O. Box 779  
Forked River, N.J. 08731

# DASTI & ASSOCIATES

CHRISTOPHER J. DASTI, ESQ. [013802010]  
310 Lacey Road  
P.O. Box 779  
Forked River, New Jersey 08731  
609-549-8990

Attorneys for Respondent, Shawn Giordano

IN THE MATTER OF SHAWN GIORDANO  
LACEY TOWNSHIP BOARD OF  
EDUCATION, OCEAN COUNTY

OFFICE OF  
ADMINISTRATIVE LAW

DOCKET NO.: EEC 10952-2020  
AGENCY DOCKET. NO. C04-20

**CERTIFICATION OF  
HAROLD "SKIP" PETERS**

I, HAROLD "SKIP" PETERS, of full age hereby certify as follows:

1. At all times relevant herein, I was a Member of the Lacey Township Board of Education. I have full knowledge of the matters set forth herein.

2. I am aware of the school ethics charges filed by Regina Discenza against Shawn Giordano. I at one time was one of the respondents in companion complaint but have since been dismissed.

3. The remaining claims against Shawn Giordano relate to Discenza's claim that Mr. Giordano unilaterally used the services of the School Board Attorney to research and investigate her conduct.

4. The claims that Mr. Giordano unilaterally contacted the School Board Attorney for a personal reason is not true.

5. The School Board Policy 0174 permits Mr. Giordano as School Board President to contact the School Board Attorney to request legal services.

6. However, in this matter, Mr. Giordano had individual discussions between myself, and other Board Members, Linda Downing, Nick Mirandi, and Frank Palino, and discussed the disturbing behavior of Ms. Discenza. The five of us in separate

DASTI & ASSOCIATES  
ATTORNEYS AT LAW

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conversations with Mr. Giordano recommended and agreed that he contact the School Board Attorney so the matter could be investigated and researched.

7. Therefore, despite Ms. Discenza's assertions, Mr. Giordano did not act "unilaterally" to request research and/or a legal opinion from the School Board Attorney with regard to her conduct. The majority of the Board Members discussed the matter separately in different telephone calls with Mr. Giordano, and each other. At no time was a quorum present. However, it was in individual discussions that led to the ultimate recommendation for Mr. Giordano to contact the School Board Attorney.

8. Therefore, Mr. Giordano was not taking any private action, and he discussed the matter with other members of the Board individually and the consensus was to have the Board Attorney, Mr. Supsie research the matter.

9. Mr. Supsie's legal opinion and/or conclusions were shared with me.

10. I hereby 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.

Dated: March 4, 2023

By:   
HAROLD "SKIP" PETERS

DASTI & ASSOCIATES  
ATTORNEYS AT LAW

310 Lacey Road  
P.O. Box 779  
Forked River, NJ. 08731

**Exhibit B**  
to  
the Verified Complaint of  
Gavin Rozzi and Regina Discenza

CHRISTOPHER M. SUPSIE, ESQ.  
STEIN, SUPSIE & TEDESCHI  
ATTORNEYS AT LAW  
1041 W. LACEY ROAD  
P.O. BOX 1070  
FORKED RIVER, NJ 08731  
ATTORNEYS FOR RESPONDENT,  
SHAWN GIORDANO

IN THE MATTER OF SHAWN GIORDANO,	STATE OF NEW JERSEY
LACEY TOWNSHIP BOARD OF EDUCATION,	OFFICE OF ADMINISTRATIVE LAW
OCEAN COUNTY	OAL DOCKET #: EEC 06739-2020 AGENCY DOCKET #: C-73-19
	<b>CERTIFICATION OF LINDA DOWNING</b>


I, Linda Downing, certify as follows:

1. For all relevant time periods involved, I was a member of the Lacey Township Board of Education.
2. On or about May 10, 2019, I became aware of former Board Member Frank Horvath's intention to vacate his seat on the Board.
3. On or about May 16, 2019, I became aware of the public posting seeking candidates for Frank Horvath's open seat.
4. On or about May 21, 2019, I became aware of Complainant's application for Frank Horvath's open seat.
5. On or about June 17, 2019, I attended the Board meeting and voted, along with the full Board, as to who I believed to be the best candidate for the open seat.

6. On or about July 22, 2019, I became aware of former Board Member Tom DeBlass' intention to vacate his seat on the Board.
7. On or about July 29, 2019, I became aware of the final list of election candidates running for the 2019 Lacey Township Board of Education open seats. The list of candidates included Complainant and Respondent, Shawn Giordano, along with six (6) others.
8. On or about August 1, 2019, I became aware of the public posting seeking candidates for Tom DeBlass' open seat.
9. By August 15, 2019, I was aware of Complainant's application to fill the vacant seat of Frank Horvath as well as Complainant's status as a candidate for the 2019 School Board election. I reasonably believed that Complainant would also pursue the vacant seat of Tom DeBlass.
10. On or about August 26, 2019, I became aware of Complainant's application for Tom DeBlass' open seat.
11. In my role as Board Member as well as my capacity as an active and involved citizen of Lacey Township, I was aware of Complainant's status as a journalist embroiled in local political matters, specifically with respect to the Board and Lacey Township School District, as well as Complainant's penchant for disclosing information to the public and making OPRA requests in pursuit of his journalistic endeavors.

12. During this time frame (I do not recall the exact date), I spoke with Respondent/Board President and I authorized him to engage the Board Attorney to perform research as to whether there were any School Ethics Commission Decisions which would have an impact upon whether a local reporter would be conflicted from being appointed by the Board to fill a vacancy of the Board.

13. I am aware that if any of the foregoing statements are willfully false, I am subject to punishment.

  
LINDA DOWNING

Dated: 8/4/2022

CHRISTOPHER M. SUPSIE, ESQ.  
 STEIN, SUPSIE & TEDESCHI  
 ATTORNEYS AT LAW  
 1041 W. LACEY ROAD  
 P.O. BOX 1070  
 FORKED RIVER, NJ 08731  
 ATTORNEYS FOR RESPONDENT,  
 SHAWN GIORDANO

IN THE MATTER OF SHAWN GIORDANO,

LACEY TOWNSHIP BOARD OF EDUCATION,

OCEAN COUNTY

STATE OF NEW JERSEY

OFFICE OF ADMINISTRATIVE LAW

OAL DOCKET #: EEC 06739-2020

AGENCY DOCKET #: C-73-19

**CERTIFICATION OF HAROLD  
 "SKIP" PETERS**

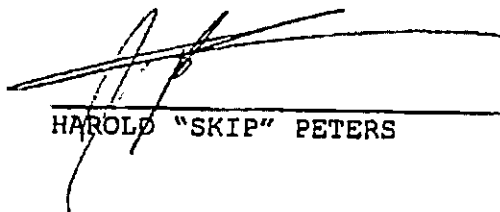
I, Harold "Skip" Peters, certify as follows:

1. From June of 2019 to the present date, I have continuously served as a member of the Lacey Township Board of Education.
2. On or about May 10, 2019, I became aware of former Board Member Frank Horvath's intention to vacate his seat on the Board.
3. On or about May 16, 2019, I became aware of the public posting seeking candidates for Frank Horvath's open seat.
4. On or about May 21, 2019, I became aware of Complainant's application for Frank Horvath's open seat.
5. On or about June 17, 2019, I attended the Board meeting and I was selected to fill the open vacancy on the Board.

6. On or about July 22, 2019, I became aware of former Board Member Tom DeBlass' intention to vacate his seat on the Board.
7. On or about July 29, 2019, I became aware of the final list of election candidates running for the 2019 Lacey Township Board of Education open seats. The list of candidates included Complainant and Respondent, Shawn Giordano, along with six (6) others.
8. On or about August 1, 2019, I became aware of the public posting seeking candidates for Tom DeBlass' open seat.
9. By August 15, 2019, I was aware of Complainant's application to fill the vacant seat of Frank Horvath as well as Complainant's status as a candidate for the 2019 School Board election. I reasonably believed that Complainant would also pursue the vacant seat of Tom DeBlass.
10. On or about August 26, 2019, I became aware of Complainant's application for Tom DeBlass' open seat.
11. In my role as Board Member as well as my capacity as an active and involved citizen of Lacey Township, I was aware of Complainant's status as a journalist embroiled in local political matters, specifically with respect to the Board and Lacey Township School District, as well as Complainant's penchant for disclosing information to the public and making OPRA requests in pursuit of his journalistic endeavors.

12. During this time frame (I do not recall the exact date), I spoke with Respondent/Board President and I authorized him to engage the Board Attorney to perform research as to whether there were any School Ethics Commission Decisions which would have an impact upon whether a local reporter would be conflicted from being appointed by the Board to fill a vacancy of the Board.

13. I am aware that if any of the foregoing statements are willfully false, I am subject to punishment.

  
HAROLD "SKIP" PETERS

Dated:

8/8/2022



CHRISTOPHER M. SUPSIE, ESQ.  
 STEIN, SUPSIE & TEDESCHI  
 ATTORNEYS AT LAW  
 1041 W. LACEY ROAD  
 P.O. BOX 1070  
 FORKED RIVER, NJ 08731  
 ATTORNEYS FOR RESPONDENT,  
 SHAWN GIORDANO

IN THE MATTER OF SHAWN GIORDANO,  
 LACEY TOWNSHIP BOARD OF EDUCATION,  
 OCEAN COUNTY

STATE OF NEW JERSEY  
 OFFICE OF ADMINISTRATIVE LAW  
 OAL DOCKET #: EEC 06739-2020  
 AGENCY DOCKET #: C-73-19

**CERTIFICATION OF NICHOLAS  
 MIRANDI**

I, Nicholas Mirandi, certify as follows:

1. For all relevant time periods involved, I was a member of the Lacey Township Board of Education.
2. On or about May 10, 2019, I became aware of former Board Member Frank Horvath's intention to vacate his seat on the Board.
3. On or about May 16, 2019, I became aware of the public posting seeking candidates for Frank Horvath's open seat.
4. On or about May 21, 2019, I became aware of Complainant's application for Frank Horvath's open seat.
5. On or about June 17, 2019, the Board voted to fill the vacancy for the open seat.

6. On or about July 22, 2019, I became aware of former Board Member Tom DeBlass' intention to vacate his seat on the Board.
7. On or about July 29, 2019, I became aware of the final list of election candidates running for the 2019 Lacey Township Board of Education open seats. The list of candidates included Complainant and Respondent, Shawn Giordano, along with six (6) others.
8. On or about August 1, 2019, I became aware of the public posting seeking candidates for Tom DeBlass' open seat.
9. By August 15, 2019, I was aware of Complainant's application to fill the vacant seat of Frank Horvath as well as Complainant's status as a candidate for the 2019 School Board election. I reasonably believed that Complainant would also pursue the vacant seat of Tom DeBlass.
10. On or about August 26, 2019, I became aware of Complainant's application for Tom DeBlass' open seat.
11. In my role as Board Member as well as my capacity as an active and involved citizen of Lacey Township, I was aware of Complainant's status as a journalist embroiled in local political matters, specifically with respect to the Board and Lacey Township School District, as well as Complainant's penchant for disclosing information to the public and making OPRA requests in pursuit of his journalistic endeavors.

12. During this time frame (I do not recall the exact date), I spoke with Respondent/Board President and I authorized him to engage the Board Attorney to perform research as to whether there were any School Ethics Commission Decisions which would have an impact upon whether a local reporter would be conflicted from being appointed by the Board to fill a vacancy of the Board.

13. I am aware that if any of the foregoing statements are willfully false, I am subject to punishment.



NICHOLAS MIRANDI

Dated:

8/4/22



New Jersey Judiciary  
Civil Practice Division

### Civil Case Information Statement (CIS)

Use for initial Law Division Civil Part pleadings (not motions) under Rule 4:5-1. Pleading will be rejected for filing, under Rule 1:5-6(c), if information above the black bar is not completed, or attorney's signature is not affixed.

#### For Use by Clerk's Office Only

Payment type <input type="checkbox"/> check <input type="checkbox"/> charge <input type="checkbox"/> cash	Charge/Check Number	Amount \$	Overpayment \$	Batch Number
Attorney/Pro Se Name Gavin Rozzi & Regina Discenza, Pro Se	Telephone Number (609) 222-4161 ext.	County of Venue Ocean		
Firm Name (if applicable)	Docket Number (when available)			
Office Address - Street 610 Lacey Rd, #1232	City Forked River	State NJ	Zip 08731	
Document Type Verified Complaint & Proposed Order to Show Cause	Jury Demand <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No			
Name of Party (e.g., John Doe, Plaintiff) Plaintiff	Caption Rozzi et al. v. Giordano et al.			
Case Type Number (See page 3 for listing) <u>701</u>				
Are sexual abuse claims alleged?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No		
Does this case involve claims related to COVID-19?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No		
Is this a professional malpractice case? If "Yes," see N.J.S.A. 2A:53A-27 and applicable case law regarding your obligation to file an affidavit of merit.	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No		
Related Cases Pending? If "Yes," list docket numbers	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No		
Do you anticipate adding any parties (arising out of same transaction or occurrence)?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No		
Name of defendant's primary insurance company (if known)	<input type="checkbox"/> None	<input checked="" type="checkbox"/> Unknown		


**The Information Provided on This Form Cannot be Introduced into Evidence.**

Case Characteristics for Purposes of Determining if Case is Appropriate for Mediation

Do parties have a current, past or recurrent relationship?  Yes  No  
If "Yes," is that relationship:  
 Employer/Employee  Friend/Neighbor  Familial  Business  
 Other (explain) Political opponents

Does the statute governing this case provide for payment of fees by the losing party?  Yes  No

Use this space to alert the court to any special case characteristics that may warrant individual management or accelerated disposition.

 Do you or your client need any disability accommodations?  Yes  No  
If yes, please identify the requested accommodation:  
  
Will an interpreter be needed?  Yes  No  
If yes, for what language?

**I certify that confidential personal identifiers have been redacted from documents now submitted to the court and will be redacted from all documents submitted in the future in accordance with Rule 1:38-7(b).**

Attorney/Self-Represented Litigant Signature: \_\_\_\_\_ /s/ Gavin Rozzi /s/ Reglna Discenza



**GAVIN ROZZI**  
610 Lacey Road, #1232  
Forked River, NJ 08731  
(609)-222-4161  
[gr@gavinrozzi.com](mailto:gr@gavinrozzi.com)

**REGINA DISCENZA**  
233 Sunset Dr.  
Forked River, NJ 08731  
Home: (609)-693-6454  
Cell: (609) 290-5125  
[regdiscenza@hotmail.com](mailto:regdiscenza@hotmail.com)

Plaintiffs, *Pro Se*

<p>GAVIN ROZZI and REGINA DISCENZA</p> <p style="text-align: center;">Plaintiffs,</p> <p style="text-align: center;">v.</p> <p>LACEY TOWNSHIP BOARD OF EDUCATION, SHAWN GIORDANO, HAROLD: "SKIP" PETERS, LINDA DOWNING, FRANK PALINO, NICHOLAS MIRANDI, JOHN DOES 1-100</p> <p style="text-align: center;">Defendants.</p>	<p>: SUPERIOR COURT OF NEW JERSEY</p> <p>: LAW DIVISION: OCEAN COUNTY</p> <p>: DOCKET NO.:</p> <p style="text-align: center;">: <u>Civil Action</u></p> <p style="text-align: center;">: <b>ORDER TO SHOW CAUSE</b></p>
--	---

**THIS MATTER** being brought before the court by *pro se* Plaintiffs Gavin Rozzi and Regina Discenza, seeking relief by summary action pursuant to R. 4:67-1(a), based upon the facts set forth in the verified complaint filed herewith; and the court having determined that this matter may be commenced by order to show cause as a summary proceeding pursuant to \_\_\_\_\_ and for good cause shown. It is on this \_\_\_\_\_ day of \_\_\_\_\_, 2023.

**ORDERED** that defendants appear and show cause on the \_\_\_\_\_ day of \_\_\_\_\_, 2023 before the Superior Court at the Ocean County Courthouse in Toms River, New Jersey at \_\_\_\_\_ o'clock in the forenoon or as soon thereafter as counsel can be heard, on why judgment should not be entered for:

A. An order declaring that Defendants have violated the Open Public Meetings Act ("OPMA");

B. Voiding all such actions taken in violation of the OPMA including, but not limited to the approval of the Board Attorney's investigations of Plaintiffs, Gavin Rozzi and Regina Discenza.

C. Enjoining Defendants from violating OPMA in the future.

D. Ordering Defendants to make public the minutes of the meeting(s) in question and any other meeting where OPMA has been violated;

E. Such other relief as this Court deems just and equitable.

And it is **further ORDERED that:**

1. A copy of this order to show cause, verified complaint and all supporting affidavits or certifications submitted in support of this application be served upon the defendants within \_\_\_\_\_ days of the date hereof, in accordance with R. 4:4-3 and R. 4:4-4, this being original process.
2. The Plaintiffs must file with the court their proof of service of the pleadings on the Defendants no later than three (3) days before the return date.
3. Defendants shall file and serve a written answer, an answering affidavit or a motion returnable on the return date to this order to show cause and the relief requested in the verified complaint and proof of service of the same by \_\_\_\_\_. The answer, answering affidavit or a motion as the case may be, must be filed with the Clerk of the Superior Court in the county listed above and a copy of the papers must be sent directly to the chambers of Judge Hodgson.



4. The Plaintiffs must file and serve any written reply to the defendant's order to show cause opposition by \_\_\_\_\_ . The reply papers must be filed with the Clerk of the Superior Court in the county listed above and a copy of the reply papers must be sent directly to the chambers of Judge Hodgson.

5. If the Defendants do not file and serve opposition to this order to show cause, the application will be decided on the papers on the return date and relief may be granted by default, provided that The Plaintiffs files a proof of service and a proposed form of order at least three days prior to the return date.

6. If The Plaintiffs have not already done so, a proposed form of order addressing the relief sought on the return date must be submitted to the court no later than three (3) days before the return date.

7. Defendants take notice that the Plaintiffs have filed a lawsuit against you in the Superior Court of New Jersey. The verified complaint attached to this order to show cause states the basis of the lawsuit. If you dispute this complaint, you, or your attorney, must file a written answer, an answering affidavit or a motion returnable on the return date to the order to show cause. and proof of service before the return date of the order to show cause. These documents must be filed with the Clerk of the Superior Court in the county listed above. A directory of these offices is available in the Civil Division Management Office in the county listed above and online at njcourts.gov. Include a \$175 filing fee payable to the "Treasurer State of New Jersey." You must also send a copy of your answer, answering affidavit or motion to the Plaintiff's attorney whose name and address appear above, or to The Plaintiffs, if no attorney is named above. A telephone

call will not protect your rights; you must file and serve your answer, answering affidavit or motion with the fee or judgment may be entered against you by default.

8. If you cannot afford an attorney, you may call the Legal Services office in the county in which you live or the Legal Services of New Jersey Statewide Hotline at 1-888-LSNJ-LAW (1-888-576-5529). If you do not have an attorney and are not eligible for free legal assistance you may obtain a referral to an attorney by calling one of the Lawyer Referral Services. A directory with contact information for local Legal Services Offices and Lawyer Referral Services is available in the Civil Division Management Office in the county listed above and online at [njcourts.gov](http://njcourts.gov).

9. The Court will entertain argument, but not testimony, on the return date of the order to show cause, unless the court and parties are advised to the contrary no later than \_\_\_\_\_ days before the return date.

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THE HONORABLE FRANCIS R. HODGSON JR, A.J.S.C

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Plaintiffs, *Pro Se*

March 22nd, 2023

**VIA ECOURTS ELECTRONIC FILING**

The Honorable Francis R. Hodgson Jr., A.J.S.C.  
Ocean County Courthouse  
118 Washington St  
Toms River, NJ 08753

**RE: Gavin Rozzi and Regina Discenza v. Lacey Township Board of Education,  
Shawn Giordano, Harold "Skip" Peters, Linda Downing, Frank Palino, Nicholas  
Mirandi, John Does 1-100**

**LETTER BRIEF IN SUPPORT OF PROPOSED ORDER TO SHOW CAUSE**

Dear Judge Hodgson:

Please accept this letter brief in lieu of a more formal brief in support of Plaintiffs' application for an Order to Show Cause. Plaintiffs also rely on their Verified Complaint and respective Certifications as if more fully set forth herein in support of their application.

**PRELIMINARY STATEMENT**

This lawsuit arises out of a brazen violation of the Open Public Meetings Act ("OPMA"), N.J.S.A. 10:4-6 et seq. by the Lacey Township Board of Education and several of its current and former members, which was concealed from the public until being disclosed for the first time on March 7th and 8th, 2023, respectively. Defendants' actions in this case fall squarely within the definition of a "serial meeting," a violation of OPMA that undermines the very foundation of our

democracy by permitting public officials to conduct public business behind closed doors, using privately owned email accounts and telephones, and without the input or scrutiny of the public they are elected to serve - or even their fellow board members who were not aligned with them politically. The facts of this case, as established by Defendants' own admissions, demonstrate a clear disregard for the law and a lack of transparency that is unacceptable in a government that is supposed to be accountable to its citizens.

Defendants have admitted to conducting a "serial meeting," by communicating with one another through personal emails, text messages, and phone calls, to deliberate on public business in a manner that allowed them to avoid the requirements of OPMA. On at least two occasions, Defendants secretly communicated among a quorum of board members and selectively excluded board members that were not aligned with them politically. This conduct is particularly egregious because it occurred without any formal vote of the board authorizing the investigations of private citizens, and no deliberations ever took place during a legally constituted meeting of the board. No minutes of any discussions were ever created, effectively shielding this activity from public purview. This conduct is not only illegal but also contrary to the public policy adopted by the legislature in the enactment of OPMA. The purpose of OPMA is to ensure that the public's business is conducted in public, and that the actions and fiscal decisions of public officials are transparent and subject to public scrutiny. Defendants' actions in this case blatantly disregard this policy and undermine the very foundations of our democratic process.

Plaintiffs have brought this action seeking to hold Defendants accountable for their intentional subversion of OPMA, and to ensure that such conduct does not go unpunished. The law is clear: a "serial meeting" violates OPMA, and those who engage in such conduct must be held accountable. Accordingly, Plaintiffs respectfully request that this Court grant an order to

show cause and enjoin Defendants from any further violations of OPMA, and from engaging in any actions that would undermine the public's right to know and participate in the governance of their community.

## **ARGUMENT**

### **POINT I**

#### **THE ACTION SHOULD PROCEED IN A SUMMARY MANNER**

The OPMA provides for summary proceedings in cases where violations of the act are alleged. N.J.S.A. 10:4-15.1. Such proceedings are designed to provide a swift and efficient means of addressing violations of the act, and to ensure that the public's right to know is protected. In addition, the New Jersey Court rules provide for summary proceedings in cases where the plaintiff seeks injunctive relief. R. 4:67-2(b). Such proceedings are appropriate where the plaintiff seeks to enjoin the commission or continuance of an act that violates the law, and where the plaintiff shows that irreparable harm will result if the act is not enjoined. *Id.* An order to show cause is an appropriate procedural vehicle for a plaintiff seeking relief under the Open Public Meetings Act ("OPMA"). See N.J.S.A. 10:4-15 et seq.; R. 4:67-1. The OPMA provides for summary relief, stating that "[a]ny person may institute a proceeding to challenge any action taken at a meeting held in violation of this act or to enforce this act" and that the court may "void any action taken at a meeting held in violation of this act" N.J.S.A. 10:4-15.

R. 4:67-2 provides that an order to show cause "shall be granted when it appears from the complaint, verified complaint or certification that immediate and irreparable damage will probably result to the applicant before notice can be served or informally given and a hearing had." Case law recognizes that violations of the OPMA can cause irreparable harm to the public's interest in transparency and accountability. Here, Plaintiffs seek injunctive relief to prevent defendants from continuing to violate the OPMA, and to ensure that the public's right to know is

protected. Plaintiffs also seek a declaration that Defendants have violated OPMA, and nullification of the approval of the Board Attorney to investigate Defendants' political opponents at taxpayer expense. The facts of this case clearly demonstrate that irreparable harm will result if defendants are allowed to continue to violate the OPMA. Accordingly, summary proceedings are appropriate under both the OPMA and the New Jersey Court rules, and this matter should proceed as same accordingly.

## POINT II

### **DEFENDANTS' USE OF PRIVATE EMAILS AND PHONE CALLS THAT SELECTIVELY EXCLUDED BOARD MEMBERS TO CONDUCT PUBLIC BUSINESS VIA A "SERIAL MEETING" CONSTITUTES A VIOLATION OF OPMA**

#### **A. Defendants Have Held a "Meeting" Within The Meaning of OPMA**

In New Jersey, the Open Public Meetings Act (OPMA), N.J.S.A. 10:4-6 et seq., serves to promote transparency and ensure the public's right to access governmental decision-making processes. The OPMA, often referred to as the "Sunshine Law," is to be construed liberally in favor of openness and public participation in the decision-making processes of public bodies. See Polillo v. Deane, 74 N.J. 562, 569 (1977). This liberal construction is essential to preserving the public's trust in their government and upholding democratic values that are fundamental to our society. Under OPMA, a "meeting" is defined as:

any gathering which is attended by, or open to, all of the members of a public body, held with the intent, on the part of the members of the body present, to discuss or act as a unit upon the specific public business of that body. Meeting does not mean or include any such gathering (1) attended by less than an effective majority of the members of a public body, or (2) attended by or open to all the members of three or more similar public bodies at a convention or similar gathering.

[N.J.S.A. 10:4-8(b).]

A "serial meeting" occurs when members of a public body communicate through a series of smaller meetings, phone calls, or written communications to reach a consensus or decision

outside the purview of the public. Such meetings undermine the spirit of the OPMA and the purpose of promoting transparency in government. This interpretation is consistent with the legal scholarship on interpretations of state open meeting statutes. For instance, in “Your Mayor, Your “Friend”: Public Officials, Social Networking, And The Unmapped New Public Square,” Bill Sherman, writing for the *Pace University Law Review* explains (emphasis added):

Open meeting statutes are universally interpreted to cover not only in-person, face-to-face meetings but also so-called “**serial**” meetings and meetings at which communication is done in writing or by telephone. (31 Pace L. Rev. 95).

Here, Defendants have admitted to communicating with one another through personal emails, text messages, and phone calls to deliberate on public business in a manner that allowed them to avoid the requirements of OPMA by holding a “serial meeting.” These actions constitute a violation of the act. Under the OPMA, a “meeting” is defined as “any gathering whether in person or by means of a communication device, which is attended by, or open to, all of the members of a public body, held for the purpose of discussing or taking action on any matter which that body has the power to act.” N.J.S.A. 10:4-8(b). A “serial meeting” occurs when members of a public body communicate with one another outside of a public meeting in a manner that allows them to deliberate on public business in a manner that avoids the requirements of the OPMA.

Defendants’ actions in this case fall squarely within the definition of a “serial meeting.” By communicating with one another through private emails, text messages, and phone calls, defendants have effectively held meetings outside of the public eye, and fellow board members thereby avoiding the requirements of the OPMA. The fact that defendants selectively excluded certain board members that were not aligned with them politically only underscores the clandestine nature of their private communications.

**B. Defendants' Holding of Secret, Unadvertised "Serial Meetings" Among a Majority of Board Members That Excluded the Board's Minority Constitutes an OPMA Violation**

As New Jersey courts have not yet explicitly addressed the issue of "serial meetings" in the context of their interpretation of the OPMA, it is important to note that this is a case of first impression. As the late local government attorney Michael A. Pane wrote in Westlaw's *New Jersey Practice Series*, Local Government Law, 34 N.J. Prac., *Local Government Law* § 11:4 (4th ed.), the question of whether a series of telephone conversations or other communications among members of a governing body constitutes a meeting under the OPMA has not yet been presented to the courts, likely due to the difficulty in obtaining proof of such meetings. Pane raises the possibility that a New Jersey court would likely find a violation of the OPMA if there were testimony as to a pattern of decision-making by telephone:

"Another interesting question raised by the definition deals with meetings by means of "communication equipment." It is common practice in local government for members to confer on the telephone on a given issue. If the mayor or presiding officer of the governing body has telephone conversations with all members of the governing body regarding a given issue and they reach a consensus through this series of conversations, has a meeting been held? **Obviously, this issue has never been presented to the Courts in this fashion, probably because proof of such a meeting would be extremely hard to obtain. Nevertheless it would seem from the intent of the Act that if there were testimony as to a pattern of decision-making by telephone, a Court might well find that a violation of the Act had occurred.**" 34 N.J. Prac., Local Government Law § 11:4 (4th ed.) (emphasis added)

Here, Defendants have provided exactly this type of testimony showing a pattern of decision-making via their serial meetings convened to discuss authorizing the Board Attorney to target Plaintiffs. This is exactly the type of hypothetical future case Pane foresaw with this analysis, as Plaintiffs need not look to the Discovery process to find proof of the serial meetings. In this case, — by their own certifications — the Defendants admit to holding and participating in the "serial meetings," and that their outcome was that the decision was made to authorize the



Board Attorney's investigations as a result. Plaintiffs are simply asking this Court to determine if, as a matter of law, these actions constitute a violation of OPMA, among other relief.

The New Jersey courts have made clear that the OPMA must be construed broadly to effectuate its purpose of transparency and accountability in government decision-making. Here, defendants' use of private emails, text messages, and phone calls to communicate, deliberate and take official action on public business outside of a public meeting clearly constitutes a violation of the OPMA. Defendants' admission to these actions in their certifications submitted by their attorneys in related litigation before the New Jersey Office of Administrative Law only serves as further evidence of their culpability and the lack of a factual dispute for this Court to resolve. Given that all Defendants have signed certifications in the school ethics litigation confirming that they all participated in serial meetings at the behest of the then-Board President, there is no factual dispute for the Court to resolve. Here, the 5 of 7 and 4 of 7 members respectively, that participated in the serial meetings were a majority that was able to effectively control all outcomes of the votes of the Board except those with which they were conflicted on due to their majority control. Therefore, their participation in the serial meetings clearly created a "meeting" of the board where official action was taken.

**C. Out-of-State Courts Have Interpreted State Open Meetings Laws to be Violated When Decisions are Made via "Serial Meetings." This Court Should Hold the Same With New Jersey's OPMA as Applied to Defendants**

The decisions of out-of-state courts in interpreting their respective state open meeting statutes are particularly instructive for a New Jersey court confronted with this issue for the first time. When confronted with a set of facts similar to the instant matter, many out-of-state courts have found violations of their respective state open meetings laws as a result of the nature of the "serial meetings." Indeed, the facts of this case mirror some pertinent out-state examples noted

by legal scholars. As John O'Connor and Michael Baratz observed in "Some Assembly Required: The Application Of State Open Meeting Laws To Email Correspondence" 12 *Geo. Mason L. Rev.* 719, (2004) at 4 (emphasis added):

**"First, in what often was an obvious effort to evade the strictures of state open meeting statutes, public officials sometimes had preplanned serial conversations among themselves for the purpose of discussing public business, and courts were left to consider whether state open meeting statutes could be construed to prohibit communications that appeared outside the statutes' literal definition of "meeting."**

The present case shares striking similarities with the example discussed in the previously mentioned law review article by O'Connor and Baratz. In both cases, the Defendants have made ill-advised admissions that reveal their deliberate attempts to evade the transparency requirements of the respective open meeting laws. In Booth Newspapers, Inc. v. University of Michigan Board of Regents, 444 Mich. 211 (1993), 507 N.W.2d 422, the university regents sought to avoid the requirements of Michigan's open meeting statute by engaging in a "serial meeting" through numerous telephone calls and meetings with advisory committees and informal sub-quorum groups of regents to narrow the pool of potential candidates for university president. One regent candidly admitted that the telephone calls and sub-quorum meetings were used to achieve the same intercommunication that could have been achieved in a full board meeting, stating (emphasis added):

**"If it had not been for the OMA and the desire not to discuss these matters in public, we would (have been) able to sit down with all the regents present, discuss the problems and talk about all the candidates at a much earlier point. (Instead), it (took) three or four hours to go around the horn on the telephones and find out what everybody is thinking."** (Booth Newspapers, Inc. v. University of Michigan Board of Regents, 444 N.W.2d 234, 243 (Mich. 1989))

New Jersey courts can find another illustrative out-of-state example in the Minnesota Open Meeting Law (OML), which provides a valuable out-of-state example that further supports the need to interpret the OPMA liberally and ensure that public bodies adhere to its requirements.

As noted in the *Mitchell Hamline Law Review* article by Daniel J. Greensweig, Aimee Gourlay, and Irene Kao, 42 *Mitchell Hamline L. Rev.* 1600 (2016), Minnesota has a variety of statutes governing public participation in governmental decision-making, with the OML being a cornerstone of this framework. Minnesota's OML requires that all meetings of public bodies, including cities and their related entities, be open to the public, serving three vital purposes: prohibiting actions at secret meetings, ensuring the public's right to be informed, and giving the public an opportunity to present its views to the public body.

The OML applies to any meeting of a quorum of a covered entity's governing body, including city councils, boards, or commissions in the state. Although the OML does not generally apply to situations involving less than a quorum, smaller gatherings may still be subject to the OML if they are designed to avoid its intent. As the article specifically states, "Although the OML does not generally apply in situations where less than a quorum is involved, these smaller gatherings may be subject to the OML if they are designed to avoid its intent, as in the case of serial meetings of overlapping smaller groups." This reasoning aligns with the principles underpinning New Jersey's OPMA, further emphasizing the need to hold public bodies accountable for transparent and inclusive decision-making processes.

In Texas, that state's Open Meetings Act serves a similar purpose as New Jersey's OPMA in promoting transparency and public participation in governmental decision-making. The case of Esperanza Peace & Justice Center v. City of San Antonio, 316 F. Supp. 2d 433 (W.D. Tex. 2001) as discussed in C. Robert Heath and Emily Willms Rogers' law review article "Did the Attorney General Shine Light on the Confusion in Texas' Sunshine Law? Interpreting Open Meetings Act Provision § 551.143," 7 *Tex. Tech Admin. L.J.* 97, 108 (2006), provides a valuable example. In this case, a federal district court considered whether the City violated the Open

Meetings Act when the Mayor held a series of "meetings" with and made telephone calls to council members on the same evening to discuss the City's budget and to obtain consensus on changes to it. The Mayor met with less than a quorum of council members and also spoke with others over the phone, careful to avoid a physical quorum of the council. Although the court did not rule on any alleged criminal violations, it found these "walking quorums" or "serial meetings" to be in violation of the Open Meetings Act. The court emphasized that the Act would apply to meetings of groups of less than a quorum where a quorum or more of the body attempted to avoid the Act's requirements by deliberately meeting in smaller groups to discuss and/or deliberate public business, and then ratifying their actions as a quorum in a subsequent public meeting. Here, the facts of this case clearly show an identical fact pattern as the conduct that the Texas statute sought to proscribe, which this Court should do here using New Jersey's OPMA. This Texas case further demonstrates the importance of considering "serial meetings" as potential violations of open meeting laws such as OPMA.

Another relevant out-of-state example comes from California, which has its own open meeting requirement, known as the Brown Act. The Brown Act, Cal. Gov. Code 54950 et seq. serves to ensure transparency in governmental decision-making processes, similar to New Jersey's OPMA. In 216 Sutter Bay Associates v. County of Sutter, 58 Cal. App. 4th 860, 68 Cal. Rptr. 2d 492 (3d Dist. 1997), the court held that a series of private meetings, or "serial meetings," in which a majority of members of a legislative body commit themselves to a decision concerning public business or engage in collective deliberation on public business, would violate the open meeting requirement imposed by the Brown Act. *West's Ann. Cal. Gov. Code* §§ 54950, 54953, 38 A.L.R.3d 1070. This California case further underscores the importance of interpreting open meeting laws, such as OPMA, to include serial meetings in order to promote

transparency and public participation in the decision-making process of public bodies. Indeed, the California state open meeting statute specifically addresses the case of serial meetings, with a pamphlet providing guidance on the law to local authorities in that state by the Office of the City Attorney stating (emphasis added):

**[I]f you have an 11-person board, a chain of communications between six of those members could result in a serial meeting in violation of the [California] Act, either if one person contacts the other five members[,] or, if, for example, member A contacts member B who contacts member C, etc., until six or more of the board members have discussed and agreed to the action they want to take on a particular item. (Quoted by Mandie Duncan, 9 *Tex. Tech. Admin. L.J.* 315)**

In the present case, the Defendants have admitted to creating such as “chain of communicatio[n]” by way of their admissions to holding secret serial meetings among 5 of 7 and 4 of 7 board members, respectively, as noted in their certifications filed in the related school ethics litigation before ALJs Pelios and Buck. It is important to note that these actions occurred while Defendants intentionally excluded the two minority board members who were unaffiliated with their political faction. This clear majority of the board, all of whom were united in political affiliation, exactly mirrors the situation that California’s legislators foresaw in the enactment of the Brown Act. This Court should do the same and interpret OPMA to cover a “serial meeting” among a majority of the Board. Supporting Plaintiffs’ allegations further, Defendant Downing has certified the following regarding the Discenza investigations (emphasis added):

**"However, in this matter, Mr. Giordano had individual discussions between myself, and other Board Members, Frank Palino, Nick Mirandi, and Harold "Skip" Peters, and discussed the disturbing behavior of Ms. Discenza. The five of us in separate conversations with Mr. Giordano recommended and agreed that he contact the School Board Attorney so the matter could be investigated and researched."**

Furthermore, the identical certifications of Defendants Mirandi, Downing, and Peters filed in the Rozzi ethics case reveal their rationale for the serial meetings with the then-Board President, Defendant Giordano was the First Amendment-protected activities of Plaintiff Rozzi:

"In my role as Board Member as well as my capacity as an active and involved citizen of Lacey Township, I was aware of Complainant [Plaintiff Rozzi]'s status as a journalist embroiled in local political matters, specifically with respect to the Board and Lacey Township School District, as well as Complainant's penchant for disclosing information to the public and making OPRA requests in pursuit of his journalistic endeavors. During this time frame (I do not recall the exact date), I spoke with Respondent/Board President and I authorized him to engage the Board Attorney to perform research as to whether there were any School Ethics Commission Decisions which would have an impact upon whether a local reporter would be conflicted from being appointed by the Board to fill a vacancy of the Board."

These ill-advised admissions, just like those in Booth Newspapers, expose the Defendants' deliberate efforts to circumvent the requirements of the OPMA and avoid conducting sensitive deliberations in an open meeting as required by law and New Jersey's public policy of transparency. Based on the totality of the circumstances, their actions do indeed constitute an OPMA violation, because they included a majority of the board, deliberated and took action on public business, and were done to intentionally evade the notice & public disclosure requirements of the Act.

Following the reasoning of the Michigan Supreme Court in Booth Newspapers, and the application of the Brown Act in California, this Court should also find that the Defendants' secret serial meetings, taken together, and in the context of their political animus towards the Plaintiffs are tantamount to a meeting of the entire Board. In doing so, the Court would align itself with other out-of-state courts that have held that pre-planned serial gatherings designed to evade the requirements of a state open meeting statute in fact constitute illegal meetings under such statutes. The Booth Newspapers example, coupled with the Defendants' ill-advised admissions in the related school ethics cases as documented by the additional certifications filed in the Rozzi and Discenza ethics cases, serve as a compelling basis for the Court to hold that the Defendants' actions does indeed constitute a violation of the OPMA. By recognizing the similarities between the cases and following the reasoning of the Michigan Supreme Court, the California statute as

well as the Texas federal district court, this Court can uphold the principles of transparency, accountability, and democracy that underpin the OPMA and ensure the public's right to access and observe the decision-making process of public bodies. In particular, the Booth Newspapers example, along with the Defendants' ill-advised admissions in the present case and the additional certifications filed in the Rozzi ethics case, demonstrate that the Defendants have intentionally and systematically sought to circumvent the OPMA's requirements. It is crucial for the Court to send a clear message that such evasive tactics will not be tolerated and that the OPMA's objectives must be respected and enforced in order to preserve the integrity of public decision-making processes.

**D. Defendants Violated OPMA by Excluding Minority Board Members From Their "Serial Meetings" in Violation of N.J.S.A. 10:4-11**

This Court must not overlook the gravity of the Defendants' blatant disregard for the Open Public Meetings Act (OPMA), N.J.S.A. 10:4-6 et seq., in this case. The Defendants have brazenly admitted in their own certifications in the school ethics litigation that they engaged in a series of secretive "serial meetings" to discuss and authorize Defendant Giordano's use of the Board Attorney to investigate Plaintiffs, in direct retaliation for their political activities. This underhanded conduct not only violates the spirit of the OPMA, but also tramples on the public's fundamental right to access and observe the decision-making process of public bodies.

Moreover, N.J.S.A. 10:4-11 unambiguously prohibits the calculated exclusion of members from meetings in an effort to circumvent the OPMA's provisions:

"No person or public body shall fail to invite a portion of its members to a meeting for the purpose of circumventing the provisions of this act."

In the present case, the Defendants deliberately excluded Plaintiff Discenza and former Board member Robert Riggs—both known for their divergent political alignment from the

majority—from participating in any of the serial meetings where they made decisions related to the authorization of the Board Attorney to investigate Plaintiffs. This exclusion not only offends the plain language of N.J.S.A. 10:4-11, but also undermines the core democratic values that the OPMA seeks to protect. The liberal construction of the OPMA in favor of openness and public participation, as established in Polillo v. Deane, 74 N.J. 562, 569 (1977), demands that the Court hold the Defendants accountable for their egregious actions. These actions have undeniably subverted the very purpose of the OPMA, which is to ensure transparency and foster public trust in government decision-making processes.

Plaintiffs submit that Defendants' signed certifications constitute *prima facie* OPMA violations because the Board President individually contacted a quorum of the board to investigate Plaintiffs. In this case, there can be no factual dispute that the serial meetings were indeed held, as the Defendants themselves have admitted to engaging in such meetings in their own certifications in the related school ethics litigation. The Court is now faced with the crucial task of determining whether, as a matter of law, whether the Defendants' admissions to holding secret serial meetings among 5 of 7 and 4 of 7 board members respectively, while deliberately excluding the two board members unaffiliated with their political faction, constitutes a violation of the OPMA. This determination is essential to preserving the integrity of the OPMA and ensuring the public's trust in the democratic process. If the Defendants are allowed to have their actions stand, OPMA's purpose and public policy objectives to prevent the evils of secretive government decision making will be severely undermined, contrary to the intentions of the Legislature in enacting OPMA.

Given the OPMA's liberal construction in favor of transparency, openness and public participation, the plain language of N.J.S.A. 10:4-11 prohibiting the exclusion of members for



the purpose of circumventing the OPMA, and the underlying purpose of the statute to promote transparency in government decision-making, this Court must conclude that the Defendants' actions constitute a violation of the OPMA. By holding secret serial meetings and intentionally excluding certain members, the Defendants have thwarted the public's right to access and observe the decision-making process and have undermined the core principles of transparency, accountability, and democracy that the OPMA seeks to uphold.

**POINT III**  
**THE DEFENDANTS' ACTIONS ARE CONTRARY TO THE PUBLIC POLICY  
ADOPTED BY THE LEGISLATURE IN THE ENACTMENT OF OPMA**

**A. Defendants' Secret "Serial Meetings" Are at Odds With the Legislature's  
Purpose in Enacting OPMA**

The Open Public Meetings Act is a legislative response to the need for transparency and accountability in government decision-making. The statute mandates that all meetings of public bodies be held in public and be open to the public. The purpose of the act is to ensure that the public is informed about the deliberations and actions of public bodies, and that the actions of these bodies are taken openly and transparently. The act reflects the strong public policy in New Jersey that the public has a right to know what their government is doing. Defendants' actions in conducting a "serial meeting" through private communications, and selectively excluding certain board members that were not aligned with them politically, are contrary to the public policy underlying the OPMA. Such actions undermine the public's trust in government and are antithetical to the principles of transparency and financial accountability that are the hallmarks of democratic government.

**B. OPMA Must Be Interpreted Broadly to Find That Defendants' Convening of  
"Serial Meetings" Where Action Was Taken by the Board's Majority  
Violated the Law**

New Jersey courts have consistently held that the OPMA must be interpreted broadly to effectuate the legislative intent of transparency and openness in government decision-making. Defendants' actions, which were designed to evade the requirements of the OPMA, are precisely the type of conduct that the legislature intended to prevent through the enactment of the statute. This is also a violation of their oath of office since all school board members are sworn to uphold the laws of the State of New Jersey.

As Defendants are the local school board and current or former members of the Board, guidance from the New Jersey School Boards Association (NJSBA) relative to the implementation of OPMA is particularly instructive here.<sup>1</sup> The NJSBA, of which Defendants are members, has provided guidance on the OPMA that emphasizes transparency and the public's right to access governmental policy and decision-making processes. The NJSBA specifically warns against "rolling meetings," which occur when one member of the governing body contacts other members individually to successively discuss or gain opinions on an item of public business. This type of communication, even if it involves less than a quorum, can violate the OPMA if it becomes a "rolling discussion" that includes an effective majority of the board.

The NJSBA article warns against "rolling" email conversations or discussions, which occur when one member of the governing body or a third party contacts other members individually to successively discuss or gain opinions on an item of public business. This would apply to other forms of electronic communications as well. The article notes, "However, communications between less than an effective majority of the governing body do not violate the

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<sup>1</sup> New Jersey School Boards Association Legal Department, "Open Public Meetings Act and Technology," New Jersey School Boards Association, last updated July 2016, <https://www.njsba.org/services/legal/topical/school-law-resources/open-public-meetings-act-and-technology/>

OPMA provided the dialogue does not become a 'rolling' discussion that ends up including an effective majority of the governing body."<sup>2</sup>

In the "rolling discussion" example, the violation of the OPMA occurs when a series of individual discussions eventually include an effective majority of the governing body, which makes the facts of this case mirror the warning provided by the NJSBA. By engaging in a rolling discussion, the public body risks having its actions challenged as a violation of the Sunshine Law, and it may also raise issues regarding the public's right of access to the email as a public record. In this matter, the conduct of the board members involved in the email conversations rises to the level of a "rolling discussion," as described by the NJSBA, because they included a clear majority of the board, with 4 of 7 and 5 of 7 board members participating, respectively. This conduct mirrors the warning provided by the NJSBA, emphasizing that engaging in a rolling discussion with an effective majority of the governing body violates the OPMA.

**C. The Defendants' Illegal Actions Threaten to Undermine Public Trust & Confidence in the Board's Decisions, a Situation OPMA Was Enacted to Guard Against**

In the present case, Board President Shawn Giordano, with intent to subvert the requirements of OPMA, engaged in communication, by selectively contacting individual board members, all of whom were either supporters of, or members of his political campaign, to gain approval for politically motivated investigations of his political opponents. He did so without seeking approval from the full board, intentionally concealing the discussions from two board members not affiliated with his campaign, and never formally disclosing the meetings or the investigations to the public. Giordano's actions directly violate the NJSBA's guidance on the OPMA and must be addressed by the court to prevent future violations and protect the public's right to know.

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<sup>2</sup> Id.

**D. ALJ Pelios Has Found Giordano's Use of the Board Attorney Was Illegal**

In the initial decision by Administrative Law Judge (ALJ) Pelios, the court ruled that Defendant Giordano's use of the Board Attorney to investigate Plaintiff Discenza was indeed illegal and violated the public trust. ALJ Pelios found that "Giordano used his official position as Board President, and one of three individuals authorized to contact the Board's attorney to request legal services and did so to secure an unwarranted advantage for himself against a political rival with whom he had a negative history." The decision further states that Defendant Giordano "failed to recognize the Board's authority by both using school resources for personal reasons and by failing to seek formal approval of either the request or the later use of the research at any time beyond seeking ratification of the charges in the November legal bill." ALJ Pelios also emphasized that Giordano's actions were **not** a *de minimis* ethical violation. The decision states, "In the present matter, the violations in question do not appear to be *de minimis*, and therefore imposition of one of the enumerated sanctions is appropriate" (In the Matter of the Complaint Against Regina Discenza and In the Matter of the Complaint Against Shawn Giordano, OAL DKT. NOS. EEC 06738-30 AND EEC 10952-20, p. 18). This further underscores the severity of Giordano's conduct. Additionally, the court noted that Giordano's actions resulted in "a not inconsiderable expense of \$5,085, which was ultimately borne by the taxpayers" (Id. at 16).

These findings highlight the significance of the ethical violation and the financial burden placed on taxpayers, further strengthening the argument for a violation of OPMA in this case. The fact that Giordano's actions were deemed illegal and a violation of the public trust constitutes an aggravating factor for the court to find a violation of the OPMA, as Giordano and the Defendant Board members sought to conceal their illegal conduct via their secret "serial

meetings.” The court’s findings demonstrate the importance of upholding the principles of transparency and accountability in the conduct of public officials.

Additionally, it is worth noting that engaging in serial meetings to authorize the investigation of private citizens running for office also potentially sets a dangerous precedent. By disregarding the OPMA’s requirements for open and transparent decision-making, the Lacey Township Board of Education risks normalizing a culture of secrecy that could ultimately compromise the integrity of future elections and public processes. Furthermore, this conduct may discourage qualified and dedicated individuals from seeking public office or applying for future board vacancies due to concerns about unwarranted investigations and potential privacy violations. Such a chilling effect could lead to a reduced pool of candidates and hinder the development of diverse, representative, and effective leadership within the community, undermining the clear purpose and public policy objectives enshrined in OPMA.

In light of these considerations, it is of utmost importance that the Lacey Township Board of Education and the current and former Board members named as Defendants in this action be held accountable for their brazen violations of the OPMA. By doing so, the court will reaffirm the significance of transparency, openness, and adherence to the law in the functioning of public bodies, thereby ensuring that the democratic values at the core of the Act remain robust and well-protected for the benefit of the community and its citizens.

**E. Defendants’ Actions Create a Chilling Effect on Public Participation and Undermine Public Confidence in the Board**

Additionally, it is crucial to emphasize the broader implications of the Lacey Township Board of Education’s actions on public confidence in local governance. When a public body

disregards the legal requirements of the OPMA and circumvents transparency through serial meetings, it fosters skepticism and distrust among the community. This erosion of public trust can result in diminished civic engagement and reduced collaboration between the community and its elected representatives. Moreover, the illegal authorization of investigations into private citizens seeking public office could also be perceived as an attempt to intimidate or suppress potential challengers to the incumbent board members. This perception can further undermine the democratic process, as voters may question the fairness and impartiality of the electoral system, especially as it relates to the use of public resources creating an unfair advantage for certain incumbent candidates.

Ultimately, the Defendant current and former Board members and the Lacey Township Board of Education's violation of the OPMA not only impacts the rights of the individual board candidates and private citizens in question but also has far-reaching consequences for the community as a whole. By upholding the principles enshrined in the OPMA and holding the board accountable for its actions, the Court can send a strong message that such conduct will not be tolerated, and that transparent, democratic processes are essential for the continued health and vitality of our public institutions.

**POINT IV**  
**THE BOARD'S APPROVAL FOR THE USE OF THE BOARD ATTORNEY TO  
INVESTIGATE ROZZI AND DISCENZA SHOULD BE INVALIDATED**

The Board's approval for the use of the board attorney to investigate Rozzi and Discenza should be invalidated because it was done in violation of the Open Public Meetings Act

(OPMA). According to N.J.S.A. 10:4-12, "[a]ll actions taken by a public body at a meeting which is in violation of any provision of this act shall be voidable in a proceeding in lieu of prerogative writ." Courts have interpreted this provision to mean that actions taken by a public body in violation of the OPMA are "void and of no effect." See Allen-Dean Corp. v. Twp. of Bedminster, 153 N.J. Super. 114, 120 (App. Div. 1977) (nullifying any action taken at a nonconforming meeting under OPMA).

In this case, Defendants admit to conducting secret meetings outside the purview of OPMA to authorize the use of the board attorney to investigate Rozzi and Discenza. Such actions are clearly prohibited by OPMA, which requires all meetings of a quorum of a public body to be open to the public. N.J.S.A. 10:4-7. Courts have emphasized the importance of OPMA's requirement for open meetings in promoting transparency and accountability in government. Moreover, the invalidation of actions taken in violation of OPMA is mandatory, and the court has no discretion to "balance the equities" or consider the harm that might result from voiding such actions. The clear and unambiguous language of the statute leaves no room for such discretionary considerations. Therefore, the Board's approval for the use of the board attorney to investigate Plaintiff Rozzi and Plaintiff Discenza should be invalidated because it did not comport with OPMA.

#### **POINT V**

#### **THE BOARD'S CONDUCT CONSTITUTES A VIOLATION OF PLAINTIFFS' CONSTITUTIONAL RIGHTS AND THE NEW JERSEY CIVIL RIGHTS ACT**

The Board's conduct in investigating Plaintiff Rozzi and Plaintiff Discenza for engaging in First Amendment-protected activities, including journalistic endeavors and public information

requests under OPRA, constitutes a violation of their constitutional rights. Specifically, the Board's use of the board attorney to investigate Rozzi and Discenza for engaging in such protected activities constitutes a violation of their right to free speech and freedom of the press. As noted above, this conduct violates the democratic principles that underlie our society. Moreover, this conduct also constitutes a violation of the New Jersey Civil Rights Act ("NJCRA"). The NJCRA prohibits discrimination and harassment on the basis of, among other things, political affiliation and association. See N.J.S.A. 10:6-1 et seq. The Board's use of the board attorney to investigate Rozzi and Discenza for engaging in protected political speech and association, while selectively excluding other board members, constitutes a form of discrimination and harassment in violation of the NJCRA.

The New Jersey courts have recognized that the NJCRA is a powerful tool for vindicating the rights of citizens and promoting equal protection under the law. In addition to the OPMA violation, the Defendants' targeting of Rozzi for his political involvement and journalistic endeavors, as well as Discenza's public statements in support of Rozzi's campaign and criticisms of the incumbent Board members, constituted a violation of the New Jersey Civil Rights Act (NJCRA). The NJCRA serves to protect individuals from the deprivation of any substantive rights, privileges, or immunities secured by the Constitution or laws of the United States or New Jersey.

By singling out Plaintiff Rozzi and Plaintiff Discenza based on their political affiliations (or lack thereof), constitutionally protected journalistic activities, and exercise of their rights under the OPMA and OPRA, the Defendants have infringed upon their rights under the First Amendment, which guarantees freedom of speech, freedom of associations and their substantive civil rights protected by the OPMA, all in violation of the NJCRA. Rozzi's past First



Amendment-protected activities had no bearing on his eligibility to serve on the board and provided no legitimate basis for an investigation. Furthermore, Discenza's public statements in support of Rozzi's campaign and criticisms of the incumbent Board members are also protected under the First Amendment. The Defendants' actions not only implicate a violation of the OPMA but also amount to an impermissible infringement on Rozzi's and Discenza's fundamental civil rights, as protected by the NJCRA.

It is essential for this Court to recognize and address these infringements, as they undermine the core principles of freedom of speech, freedom of the press, political participation, and transparency in public decision-making that are enshrined in both the United States and New Jersey Constitutions. By upholding the substantive civil rights of Plaintiffs Rozzi and Discenza, the Court can ensure the proper functioning of public bodies and safeguard the democratic values at the heart of our legal system. Given the Board's violation of Plaintiffs' constitutional rights and their conduct in selectively targeting them for investigation based on their political affiliation and association, the NJCRA provides an additional basis for relief in this case.

### CONCLUSION

For the foregoing reasons, plaintiffs respectfully request that the Court issue an order to show cause against defendants, and that the Court grant plaintiff's request for injunctive relief to prevent defendants from continuing to violate the OPMA. Plaintiffs further request that the Court proceed with this matter in a summary manner, pursuant to the OPMA and New Jersey Court rules, to ensure that the public's right to know is protected, and that defendants are held accountable for their misconduct.

Respectfully submitted,

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DocuSigned by:

*Gavin Rozzi*

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GAVIN ROZZI

Plaintiff, *Pro Se*

DocuSigned by:

*Regina Discenza*

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REGINA DISCENZA

Plaintiff, *Pro Se*

3/22/2023

Dated: \_\_\_\_\_

**GAVIN ROZZI**  
610 Lacey Road, #1232  
Forked River, NJ 08731  
(609)-222-4161  
[gr@gavinrozzi.com](mailto:gr@gavinrozzi.com)

**REGINA DISCENZA**  
233 Sunset Dr.  
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Home: (609)-693-6454  
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[regdiscenza@hotmail.com](mailto:regdiscenza@hotmail.com)

Plaintiffs, *Pro Se*


GAVIN ROZZI and REGINA DISCENZA  <p style="text-align: center;">Plaintiffs,</p> <p style="text-align: center;">v.</p> LACEY TOWNSHIP BOARD OF EDUCATION, SHAWN GIORDANO, HAROLD "SKIP" PETERS, LINDA DOWNING, FRANK PALINO, NICHOLAS MIRANDI, JOHN DOES 1-100  <p style="text-align: center;">Defendants.</p>	: SUPERIOR COURT OF NEW JERSEY : LAW DIVISION: OCEAN COUNTY : : DOCKET NO.: : : : <u>Civil Action</u> : : <b>CERTIFICATION OF</b> : <b>REGINA DISCENZA</b> : : :
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Regina Discenza, of full age, after first being duly sworn according to law, upon her oath deposes and says:

1. I am a former member of the Lacey Township Board of Education and served during the time period relevant to the Verified Complaint in this lawsuit.
2. I am personally familiar with the events described in the Verified Complaint in this lawsuit, and the facts set forth herein are based on my personal knowledge.

3. I am making this Certification in support of our Verified Complaint and proposed Order to Show Cause.
4. I was never contacted to provide my assent to the Board Attorney's investigations of Gavin Rozzi, Sonia Marchitello, or myself by Board President Giordano nor was the other board member Mr. Robert Riggs who was also not affiliated with Giordano's political campaign.
5. I personally attended all executive session meetings of the Board during the 2019 time period at issue.
6. No formal vote of the board was ever taken to authorize the investigations of private citizens, and no deliberations ever took place during any legally constituted meeting of the board.
7. No minutes during the year 2019 indicate any discussions were ever created.
8. I only became aware of the existence of the non-public "serial meetings" once the certifications were produced by Giordano's attorney in response to the school ethics litigation dated February 27, 2023.
9. I became aware of the circumstances when I received the documents both in response to my OPRA request and from my attorney Alyssa K. Weinstein (Plaintiff Discenza's ethics defense attorney).
10. I received the documents on or about March 7th, 2023 from Ms. Weinstein.
11. The existence of the board attorney investigations of Giordano's political opponents were never disclosed to Mr. Robert Riggs, another board member who was also unaffiliated with Giordano's campaigns.

12. I received the OPRA request documents relative to Plaintiff Rozzi on March 8th, 2023. A true and correct copy of the OPRA response is available at [https://opramachine.com/request/motions\\_to\\_judge\\_carl\\_buck\\_for\\_n#incoming-72454](https://opramachine.com/request/motions_to_judge_carl_buck_for_n#incoming-72454)
13. The facts set forth herein are true and correct to the best of my knowledge, information, and belief.
14. I am aware that the information contained in this certification may be used in court and that any false statements made herein are subject to the penalties of N.J.S.A. 2C:28-3.
15. I certify under penalty of perjury that the foregoing statements made by me are true.

DocuSigned by:  
  
C985921808C04D3  
REGINA DISCENZA

3/22/2023  
Dated: \_\_\_\_\_

**GAVIN ROZZI**  
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Forked River, NJ 08731  
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Plaintiffs, *Pro Se*

GAVIN ROZZI and REGINA DISCENZA  <p style="text-align: center;">Plaintiffs,</p> <p style="text-align: center;">v.</p> LACEY TOWNSHIP BOARD OF EDUCATION, SHAWN GIORDANO, HAROLD "SKIP" PETERS, LINDA DOWNING, FRANK PALINO, NICHOLAS MIRANDI, JOHN DOES 1-100  <p style="text-align: center;">Defendants.</p>	: SUPERIOR COURT OF NEW JERSEY : LAW DIVISION: OCEAN COUNTY : : DOCKET NO.: : : <u>Civil Action</u> : : <b>CERTIFICATION OF</b> : <b>GAVIN ROZZI</b> : : :
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Gavin Rozzi, of full age, after first being duly sworn according to law, upon his oath deposes and says:

1. I am one of the two Plaintiffs in this action.
2. I am personally familiar with the events described in the Verified Complaint in this lawsuit, and the facts set forth herein are based on my personal knowledge, with the balance based upon public records that I have personally reviewed.

3. I am making this Certification in support of our Verified Complaint and proposed Order to Show Cause.
4. I was contacted by Regina Discenza (“Plaintiff Discenza”) on March 8th, 2023 upon her obtaining a response to an OPRA request she made for information from the New Jersey Office of Administrative Law related to an ethics case arising out of a complaint I originally filed, as well as documents she chose to share that she received from her own attorney in her companion ethics matter.
5. The matter in question arose from a complaint that I first filed with the School Ethics Commission (the “SEC”) on or about December, 2019.
6. The OPRA request was for pleadings and documents filed in proceedings before ALJ Carl Buck III at the New Jersey Office of Administrative Law (the “OAL”), In The Matter of Shawn Giordano, Docket No. EEC 06739-2020, Agency Docket No. C73-19.
7. On July 21st, 2020 the School Ethics Commission issued a Probable Cause Notice in response to my complaint. The Probable Cause Notice found probable cause to credit all four counts of my allegations relative to the illegal and improper use of Board Attorney Christopher Supsie by Defendant Giordano. A true and correct copy of the Probable Cause notice is attached to this certification as “Exhibit A.”
8. Pursuant to N.J.A.C. 6A:28-10.7(b)(1), the SEC removed me as a party to the action, and appointed Deputy Attorney General Sydney Finkelstein, Esq. to prosecute the case on behalf of the SEC, which became the complainant in the matter.
9. Because I was no longer a party to the case, I was no longer served with copies of the relevant pleadings, nor was I apprised of any hearings by the OAL or progression of the case. I essentially have no greater access than any member of the public.

10. March 8th, 2023 was the same day that the OAL responded to Discenza's OPRA request and made the documents public.
11. The OPRA response provided by the OAL contained a Motion for Summary Decision submitted by Giordano/former board attorney Christopher Supsie, which was dated on or about August, 2022 but only made public on March 8th, 2023 via Plaintiff Discenza's OPRA request.
12. The motion contained certifications signed by Defendants Linda Downing, Harold "Skip" Peters, and Nicholas Mirandi, all of whom were board members at the time.
13. In the certifications, Defendants Downing, Peters & Mirandi all admitted to holding secret discussions outside of any legally constituted meeting with Defendant Giordano.
14. These serial meetings resulted in official action of the board by way of their purported authorization for Defendant Giordano to contact the Board Attorney to investigate me.
15. Because I was no longer a party to the ethics litigation, and the documents were not published via any other source and none of the attorneys or other parties in the case have provided any information to me about the progression of the ethics cases, Discenza's OPRA requests were the first time that Defendants' conduct was made public, and that I became aware of it, because it was previously concealed.
16. The certifications produced in response to the OPRA request demonstrate that there were private communications among members of the Board of Education, outside of the purview of the public, where they discussed me and took actions against me.
17. The serial communications described in the certifications constituted a quorum of the board, making the OPMA violation even more egregious.



18. Notably, the certifications made it clear that former Board members Mr. Robert Riggs and Plaintiff Discenza were excluded from any of the serial meetings where official action was taken, to wit, the purported authorization and assent to Giordano's use of the former Board Attorney Christopher Suspie to investigate political opponents with whom he had a negative history.
19. These actions were taken solely on the basis of my prior First Amendment-protected activity, including journalistic endeavors and public information requests under OPRA, none of which conflicted with my political campaign or would have impacted my ability to serve.
20. The only people that were singled out for investigations by the former Board Attorney were the vocal opponents of Board policy and decision making - myself, Sonia Marchitello and Plaintiff Discenza.
21. This conduct violates the Open Public Meetings Act (OPMA), our civil rights, and further undermines the public trust in government.
22. I believe that the majority of the board's participation - 4 of 7 members - in these secret discussions to authorize investigations into their political opponents will create a chilling effect on public participation if not remedied by this Court.
23. The facts set forth herein are true and correct to the best of my knowledge, information, and belief.
24. I am aware that I may be subject to punishment if any statement made herein is knowingly false or misleading.

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Dated: 3/22/2023

DocuSigned by:  
*Gavin Rozzi*  
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GAVIN ROZZI

.

**Exhibit A**  
to  
the Certification of Gavin Rozzi

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*State of New Jersey*

DEPARTMENT OF EDUCATION

PO Box 500

TRENTON, NJ 08625-0500

PHILIP D. MURPHY  
*Governor*

SHEILA Y. OLIVER  
*Lt. Governor*

KEVIN DEHMER  
*Interim Commissioner*

**SCHOOL ETHICS COMMISSION**

July 21, 2020

**For Complainant**

Gavin Rozzi  
202 Lakeview Court  
Forked River, NJ 08731

**For Complainant**

Sonia Marchitello  
232 Sunset Drive  
Forked River, NJ 08731

**For Respondents**

Christopher M. Supsie, Esq.  
Stein & Supsie  
1041 W. Lacey Road  
P.O. Box 1070  
Forked River, NJ 08731

SUBJECT: GAVIN ROZZI v. SHAWN GIORDANO, LACEY TOWNSHIP BOARD OF EDUCATION, OCEAN COUNTY, SCHOOL ETHICS COMMISSION DOCKET #C73-19

SUBJECT: SONIA MARCHITELLO v. SHAWN GIORDANO AND LINDA DOWNING, LACEY TOWNSHIP BOARD OF EDUCATION, OCEAN COUNTY, SCHOOL ETHICS COMMISSION DOCKET #C02-20

Dear Parties:

Enclosed please find the Probable Cause Notice issued by the School Ethics Commission at its meeting on July 21, 2020.

If you have any questions about this acknowledgement, please contact our office at [school.ethics@doe.nj.gov](mailto:school.ethics@doe.nj.gov).

Sincerely,

Kathryn A. Whalen, Director  
School Ethics Commission

Enclosure

***Before the School Ethics Commission  
Docket No. C73-19 and C02-20 (Consolidated)  
Probable Cause Notice***

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**Gavin Rozzi and Sonia Marchitello,  
Complainants**

v.

**Shawn Giordano,  
Lacey Township Board of Education, Ocean County,  
Respondent**

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**I. Procedural History**

This consolidated matter arises from two (2) separate but related Complaints. In **C73-19**, a Complaint was filed on December 9, 2019, by Gavin Rozzi (Complainant Rozzi), alleging that Shawn Giordano (Respondent Giordano), a then current but now former member of the Lacey Township Board of Education (Board), violated the School Ethics Act (Act), *N.J.S.A.* 18A:12-21 *et seq.* More specifically, the Complaint alleges that Respondent Giordano violated *N.J.S.A.* 18A:12-24(b) in Count 1, *N.J.S.A.* 18A:12-24.1(c) in Count 2, 18A:12-24.1(e) in Count 3, and *N.J.S.A.* 18A:12-24.1(f) in Count 4. After the Complaint was served on Respondent Giordano, he filed a Motion to Dismiss in Lieu of Answer (Motion to Dismiss), and also alleged that the Complaint is frivolous.

In **C02-20**, a Complaint was filed on January 8, 2020, by Sonia Marchitello (Complainant Marchitello), with Respondent Giordano and Linda Downing (Ms. Downing), a former and present member of the Board respectively, named as Respondents. The Complaint alleged violations of *N.J.S.A.* 18A:12-24(b) in Count 1, *N.J.S.A.* 18A:12-24.1(c) in Count 2, 18A:12-24.1(e) in Count 3, and *N.J.S.A.* 18A:12-24.1(f) in Count 4. After the Complaint was served on Respondents, they too filed a Motion to Dismiss, and also alleged that the Complaint is frivolous.

Following consolidation of the above-captioned matters, and at its meeting on May 19, 2020, the School Ethics Commission (Commission) adopted a decision dismissing Ms. Downing as a named Respondent, and denying the Motion to Dismiss as to Respondent Giordano in its entirety. The Commission also found the Complaints not frivolous, and denied the requests for sanctions. Based on its decision, the Commission also voted to direct Respondent Giordano to file an Answer to Complaint (Answer). On June 12, 2020, Respondent Giordano filed an Answer.

The parties were notified by correspondence dated June 15, 2020, that this matter would be placed on the Commission's agenda for its regularly scheduled meeting on June 23, 2020, in order to make a determination regarding probable cause. At its meeting on June 23, 2020, the

Commission considered the filings and, at its meeting on July 21, 2020, the Commission voted to find probable cause for the remaining allegations in this consolidated matter. Based on its finding of probable cause, the Commission voted to transmit the within consolidated matter to the Office of Administrative Law (OAL) for a hearing.

## II. Summary of the Pleadings

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### C73-19

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#### A. *The Complaint*

Complainant Rozzi, a non-prevailing candidate in the November 5, 2019, Board election, asserts that he became aware of the events giving rise to this Complaint after submitting Open Public Records Act (OPRA) requests to the Lacey Township School District (District). More specifically, on or about August 15, 2019, “just two weeks into the campaign cycle following the ... deadline to submit candidacy petitions – Respondent Giordano (also a non-prevailing candidate) engaged the Board [a]ttorney for the purpose of conducting political research into Complainant in support of Respondent Giordano’s reelection campaign and to undermine ... Complainant’s candidacy.” According to Complainant, there was “no rational basis” between Respondent Giordano’s engagement of the attorney and any legitimate Board business. Nevertheless, Respondent Giordano “chose to abuse his position to direct the Board Attorney to conduct research and prepare an opinion regarding the Complainant” solely for Respondent Giordano to use in his campaign.

In particular, an OPRA request revealed that the Board attorney sent an email to Respondent Giordano’s official school email account with the subject line “Gavin Rozzi” (Complainant). The email contained a “legal opinion” drafted by the Board attorney. Based on Complainant’s information and belief, “at no time were the contents of the work done by the Board attorney ... shared with any other members of the Board or administration,” and “[n]o other [B]oard members were provided with a copy of the email or its attachment. This email, according to Complainant, corresponds with “multiple entries” on the legal bills for the month of August (for an approximate cost of \$510.00). As argued by Complainant, Respondent Giordano had “no legitimate reason to use his official position to direct the Board attorney to prepare an opinion or otherwise conduct opposition research ... .” The Board attorney should not have been used to serve Respondent Giordano’s personal and private interests at the expense of the District’s taxpayers.

Based on the facts set forth above, Complainant alleges that Respondent Giordano violated *N.J.S.A.* 18A:12-24(b) because he knowingly used his official position to secure an unwarranted privilege for himself when he directed the Board’s attorney to serve his own personal and political interests; *N.J.S.A.* 18A:12-24.1(c) because he failed to confine his Board action to policy making, planning, and appraisal by acting alone to direct the Board’s attorney to investigate one of his political opponents (Complainant Rozzi) during the 2019 Board election; *N.J.S.A.* 18A:12-24.1(e) because he compromised the integrity of the Board by unilaterally directing the Board’s attorney to act in support of his own personal and political agenda by commencing an investigation and requesting a legal opinion regarding one of his political

opponents (Complainant Rozzi); and *N.J.S.A.* 18A:12-24.1(f) because he used his position as Board President for personal gain by directing the Board attorney to investigate a political opponent (Complainant Rozzi).

**B. Answer**

In his Answer, Respondent Giordano admits the statements in paragraph 1; neither admits nor denies the statements in paragraph 2 and leaves Complainant to his proofs “as to when and how he became aware of the alleged factual circumstances regarding this matter and as to the timeliness of his filing of the Complaint”; admits to “engagement of the Board Attorney in August of 2019” in statement 3, but denies the “balance of this paragraph”; neither admits nor denies paragraphs 4 and 5, and leaves Complainant to his proofs; admits that the “Board attorney submitted billing statements to the Board for legal services rendered in [August 2019], and that said bills were approved by the Board,” but denies the remainder of paragraph 6; neither admits nor denies the “purview of the [Act] ... and the responsibility of the [Commission] in paragraph 7 and denies the remainder of that paragraph, adding that the “allegations contained therein are without factual support and verification, and consist entirely of conjecture and accusations without merit.”

With regard to the alleged violations of the Act, Respondent denies “all alleged facts and circumstances” which would indicate a violation of” *N.J.S.A.* 18A:12-24(b), *N.J.S.A.* 18A:12-24.1(c), *N.J.S.A.* 18A:12-24.1(e), and *N.J.S.A.* 18A:12-24.1(f). Respondent also argued that, “in light of Complainant’s public career as a journalist as well as Complainant’s clear intention to serve on the Board ..., Respondent inquired with the Board Attorney as to the guidelines regarding the eligibility for an active journalist to serve on a public school Board of Education . . . .”

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**C02-20**

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**A. The Complaint**

Complainant Marchitello, also a non-prevailing candidate in the November 5, 2019, Board election, asserts that she became aware of the events giving rise to this Complaint after submitting OPRA requests to the District. More specifically, on or about September 20, 2019, “approximately two months into the campaign cycle following the ... deadline to submit ... candidacy petitions – Respondent Giordano [also a non-prevailing candidate] engaged the Board [a]ttorney for the purpose of conducting political research into Complainant in support of Respondent Giordano’s reelection campaign and to undermine ... Complainant’s candidacy.” According to Complainant, there was “no rational basis” between Respondent Giordano’s engagement of the attorney and any legitimate Board business. Nevertheless, Respondent Giordano “chose to abuse his position to direct the Board Attorney to conduct research and prepare an opinion regarding the Complainant” solely for Respondent Giordano to use in his campaign.

In particular, an OPRA request revealed that the Board attorney sent an email to Respondent Giordano’s official school email account with the subject line “RE: Sonia

Marchitello” (Complainant). The email contained an attachment comprised of correspondence dated September 25, 2019, labeled “S. Giordano opinion ltr.” Upon information and belief, “at no time were the contents of the work done by the Board attorney ... shared with all other members of the Board or administration.” Instead, only one other Board member was provided with a copy of the email and attachment. This email, according to Complainant, corresponds with “multiple entries” on the legal bills for the month of September (for an approximate cost of \$720.00). As argued by Complainant, this work was done to support Respondent Giordano’s personal and political agenda, and had absolutely nothing to do with the official business of the Board, as the Complainant is not currently a staff member. Complainant continues, Respondent Giordano had “no legitimate reason to use his official position to direct the Board attorney to prepare an opinion or otherwise conduct opposition research ... .” The Board attorney should not have been used to serve Respondent Giordano’s personal and private interests at the expense of the District’s taxpayers.

Based on the facts set forth above, Complainant alleges that Respondent Giordano violated *N.J.S.A.* 18A:12-24(b) because he knowingly used his official position to secure an unwarranted privilege for himself when he directed the Board’s attorney to serve his own personal and political interests and, thereby, used District resources to target one of his political opponents (Complainant Marchitello); *N.J.S.A.* 18A:12-24.1(c) because he failed to confine his Board action to policy making, planning, and appraisal by acting alone to direct the Board’s attorney to investigate one of his political opponents (Complainant Marchitello) during the 2019 Board election for personal benefit; *N.J.S.A.* 18A:12-24.1(e) because he compromised the integrity of the Board by unilaterally directing the Board’s attorney to act in support of his own personal and political agenda by commencing an investigation and requesting a legal opinion regarding one of his political opponents (Complainant Marchitello). Respondent Giordano also compromised the public’s faith in the Board by using Board resources for his own personal and political gain to silence one of his political opponents (Complainant Marchitello); and *N.J.S.A.* 18A:12-24.1(f) because he used his position as Board President for personal gain by directing the Board attorney to investigate a political opponent in support of his own personal and political agenda (Complainant Marchitello).

#### **B. Answer**

In his Answer, Respondent Giordano admits the statements in paragraph 1; paragraph 2 is neither admitted nor denied, and Complainant is left to her proofs as to “when and how she became aware of the alleged factual circumstances regarding this matter and as to the timeliness of her filing of the Complaint”; admits to “engagement of the Board Attorney in September 2019 for legal services,” denies the remainder of paragraph 3, and notes that the “allegations contained therein are without factual support and verification, and consist entirely of conjecture and accusations without merit”; neither admits nor denies paragraphs 4 and 5, and leaves Complainant to her proofs; admits that the “Board Attorney submitted billing statements to the Board for legal services rendered in [September 2019], and that the bills were approved by the [Board],” but denies the remainder of paragraph 6, and leaves Complainant to her proofs, noting that the allegations are “without factual support and verification, and consist entirely of conjecture and accusations without merit.”; neither admits nor denies the “purview of the [Act] ... and the responsibility of the [Commission] in paragraph 7,” and denies the remainder of that



paragraph, adding that the “allegations contained therein are without factual support and verification, and consist entirely of conjecture and accusations without merit.”

As to Counts 1 through 4, Respondent denies “all alleged facts and circumstances” which would indicate a violation of” *N.J.S.A.* 18A:12-24(b), *N.J.S.A.* 18A:12-24.1(c), *N.J.S.A.* 18A:12-24.1(e) and *N.J.S.A.* 18A:12-24.1(f). Respondent also argued that he “was aware of Complainant Marchitello’s history of appearing at Board of Education meetings and speaking during the public comment section of said meetings,” and that Complainant Marchitello “exhibited a pattern of attempting to publicly discuss confidential personnel, student, and District-related matters, as well as the terms of her own prior employment and subsequent termination.” In consideration of her “topics of discussion during the June and July 2018 Board meetings, as well as Complainant’s renewed appearances at the August and September 2019 Board meetings, Respondent contacted the Board attorney to request research regarding the Board’s ability ... to reply to comments made by Complainant ... *if* the situation arose during future Board meetings (emphasis added).”;

In connection with both C73-19 and C02-20, Respondent also asserted thirty-eight (38) affirmative defenses, including that the Complaints fail to state a claim upon which relief can be granted; are devoid of facts that would support a violation of the Act and/or the Code; he was authorized to communicate with Board counsel regarding Board related matters; and his interactions with Board counsel were “legitimate.” Respondent further argues that Complainants should be “barred from [the] relief requested in Complaints,” and he “retains the right to assert any and all additional legal defenses throughout the progression of this matter.”

### III. Analysis

This matter is before the Commission for a determination of probable cause pursuant to *N.J.A.C.* 6A:28-10.9, processing of Complaints alleging *both* prohibited acts and violations of the Code of Ethics for School Board Members (the Code). A finding of probable cause is not an adjudication on the merits, but, rather, an initial review whereupon the Commission makes a preliminary determination as to whether the matter should proceed to an adjudication on the merits, or whether further review is not warranted. In order to determine whether probable cause exists, the Commission must determine whether there is a reasonable ground of suspicion supported by facts and circumstances strong enough in themselves to warrant a reasonable person to believe that the Act was violated as alleged in the Complaint. *N.J.A.C.* 6A:28-10.7.

Pursuant to *N.J.A.C.* 6A:28-10.9, when a Complaint, as here, alleges violations of both *N.J.S.A.* 18A:12-24 (Prohibited acts) and *N.J.S.A.* 18A:12-24.1 (the Code), the Commission must *first* determine whether, based on the available record, probable cause exists to credit the allegations that Respondent Giordano violated *any subsection* of *N.J.S.A.* 18A:12-24 (Prohibited acts). If probable cause is not found for any alleged violation of *N.J.S.A.* 18A:12-24, the Commission’s review shall be guided by *N.J.A.C.* 6A:28-10.8. If probable cause is found for any alleged violation of *N.J.S.A.* 18A:12-24, then the Commission must review, as required by *N.J.A.C.* 6A:28-10.7, the remaining Code allegations, i.e., those in Counts 2-4, to determine if probable cause exists.

**A. *Alleged Prohibited Act***

In this consolidated matter, Complainants allege, albeit based on conduct that occurred on different dates and involved different monetary amounts, that Respondent Giordano violated *N.J.S.A. 18A:12-24(b)*. This provision of the Act provides:

b. No school official shall use or attempt to use his official position to secure unwarranted privileges, advantages or employment for himself, members of his immediate family or others;

In order to credit the alleged violation of *N.J.S.A. 18A:12-24(b)*, the Commission must find evidence that Respondent Giordano used or attempted to use his official position to secure an unwarranted privilege, advantage or employment for himself, members of his immediate family, or “others.”

In Count 1, Complainants allege that Respondent Giordano violated *N.J.S.A. 18A:12-24(b)* because he knowingly used his official position to secure an unwarranted privilege for himself when he directed the Board’s attorney to serve his own personal and political interests when he used District resources to target his political opponents (Complainants). Respondent Giordano counters that there are no facts or circumstances which could support a violation of *N.J.S.A. 18A:12-24(b)*, he was authorized to request legal advice from Board counsel, and his request for legal services was related to legitimate Board business.

After analyzing the pleadings, the Commission finds that Complainants have articulated a reasonable ground of suspicion supported by facts and circumstances strong enough in themselves to warrant a reasonable person to believe that Respondent Giordano violated *N.J.S.A. 18A:12-24(b)*. It is undisputed that Respondent, in his capacity as Board President, and as an individual authorized to request legal services from the Board’s attorney, sought and received legal advice from the Board’s attorney regarding both Complainant Rozzi and Complainant Marchitello. Based on the present facts and circumstances, including the timing of Respondent’s requests of Board counsel relative to the upcoming Board election; the fact that Complainants, like Respondent, were running for a seat on the Board; the fact that the stated purpose for requesting the at-issue legal services was (a) for a subject over which the Board did not have jurisdiction or the authority to act (i.e., the eligibility of an individual to serve) and (b) for a matter which *could* (or could not) occur at the public comment portion of a future Board meeting; the fact that the purported concerns regarding Complainants appear to have solely originated from Respondent and did not appear to be voiced or shared by any other member of the Board; and the fact that the legal advice provided by Board counsel was not shared with any other member of the Board (except with Ms. Downing as it related to Complainant Marchitello) or with the District’s administration, the Commission finds probable cause for the alleged violation of *N.J.S.A. 18A:12-24(b)*.

**B. *Alleged Code Violations***

Having found probable cause to credit the allegation that Respondent Giordano engaged in a prohibited act (*N.J.S.A. 18A:12-24(b)* in Count 1), the Commission must now review

whether there is probable cause to credit the alleged violations of the Code in Counts 2-4. In these Counts, Complainants claim that Respondent Giordano violated *N.J.S.A. 18A:12-24.1(c)* in Count 2, violated *N.J.S.A. 18A:12-24.1(e)* in Count 3, and violated *N.J.S.A. 18A:12-24.1(f)* in Count 4. These provisions of the Code provide, respectively:

c. I will confine my board action to policy making, planning, and appraisal, and I will help to frame policies and plans only after the board has consulted those who will be affected by them.

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

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

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

Pursuant to *N.J.A.C. 6A:28-6.4(a)(3)*, factual evidence of a violation of *N.J.S.A. 18A:12-24.1(c)* shall include evidence that Respondent Giordano took board action to effectuate policies and plans without consulting those affected by such policies and plans, or took action that was unrelated to Respondent Giordano's duty to (i) develop the general rules and principles that guide the management of the school district or charter school; (ii) formulate the programs and methods to effectuate the goals of the school district or charter school; or (iii) ascertain the value or liability of a policy.

In Count 2, Complainants argue that, in violation of *N.J.S.A. 18A:12-24.1(c)*, Respondent Giordano failed to confine his Board action to policy making, planning, and appraisal when he acted alone to direct the Board's attorney to investigate his political opponents (Complainants) during the 2019 Board election for his own personal benefit. Respondent Giordano counters that there are no facts or circumstances which could establish a violation of *N.J.S.A. 18A:12-24.1(c)*, he was authorized to request legal advice from Board counsel, and his request for legal services was related to legitimate Board business.

Following its review of the pleadings, the Commission finds that Complainants have articulated a reasonable ground of suspicion supported by facts and circumstances strong enough in themselves to warrant a reasonable person to believe that Respondent Giordano violated *N.J.S.A. 18A:12-24.1(c)*. In his Answer, Respondent admits that he engaged the services of the Board's attorney about issues concerning Complainant Rozzi and Complainant Marchitello. Given the current facts and circumstances, including the timing of Respondent's request of Board counsel relative to the upcoming Board election; the fact that both Complainants were running for a seat on the Board (as was Respondent); the specious nature of the stated purposes for which Respondent purportedly sought legal advice from Board counsel; the fact that the concerns related to Complainants were those of Respondent, and not those of the Board; and the fact that Respondent did not share the legal advice provided (except on a very limited basis) with

the Board or the District's administration, the Commission finds probable cause for the alleged violation of *N.J.S.A.* 18A:12-24.1(c).

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

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

In Count 3, Complainants contend that Respondent Giordano violated *N.J.S.A.* 18A:12-24.1(e) because he compromised the integrity of the Board when he unilaterally directed the Board's attorney to act in support of his own personal and political agenda by commencing an investigation and requesting a legal opinion regarding his political opponents (Complainants), and compromised the public's faith in the Board by using Board resources for his own personal and political gain to silence a political opponent (Complainant Marchitello). Respondent Giordano counters that there are no facts or circumstances which could demonstrate *N.J.S.A.* 18A:12-24.1(e), he was authorized to request legal advice from Board counsel, and his request for legal services was related to legitimate Board business.

After analyzing the pleadings, the Commission finds that Complainants have articulated a reasonable ground of suspicion supported by facts and circumstances strong enough in themselves to warrant a reasonable person to believe that Respondent Giordano violated *N.J.S.A.* 18A:12-24.1(e). Respondent does not contest the fact that he asked the Board's attorney to conduct research and to provide a legal opinion regarding Complainants, and does not deny that he received the legal services requested. Based on the facts and circumstances presently before the Commission, most particularly the temporal proximity between Respondent's requests and the upcoming Board election; the fact that Complainants (and Respondent) were candidates for the Board; the questionable basis for Respondent's requests; the fact that Respondent appears to have been alone in his concerns about Complainants; and the fact that Respondent did not openly share the substance of the legal advice received, the Commission finds probable cause for the alleged violation of *N.J.S.A.* 18A:12-24.1(e).

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

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

In Count 4, Complainants assert that, in violation of *N.J.S.A.* 18A:12-24.1(f), Respondent Giordano used his position as Board President for personal gain by directing the Board attorney to investigate political opponents (Complainants) in support of his own personal and political agenda. Respondent Giordano counters that there are no facts or circumstances which could

prove a violation of *N.J.S.A.* 18A:12-24.1(f), he was authorized to request legal advice from Board counsel, and his request for legal services was related to legitimate Board business.

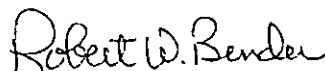
Following its review of the pleadings, the Commission finds that Complainants have articulated a reasonable ground of suspicion supported by facts and circumstances strong enough in themselves to warrant a reasonable person to believe that Respondent Giordano violated *N.J.S.A.* 18A:12-24.1(f). Respondent acknowledges that, as asserted, he asked the Board's attorney to provide legal advice and guidance concerning Complainants, albeit for purportedly different reasons, and that he received the requested legal advice. Given the current facts and circumstances, most notably Respondent's admission that he sought (and received) legal advice about Complainants; the fact that the upcoming Board election was imminent; both Complainants were vying for a position on the Board which could have resulted in the ousting of Respondent; Respondent's stated purpose for requesting legal advice appears suspect; there are no facts and circumstances presently available indicating that anyone other than Respondent believed legal counsel was needed relative to either Complainant; and Respondent did not disseminate the legal advice received with the Board or with the District's administration, the Commission finds probable cause for the alleged violation of *N.J.S.A.* 18A:12-24.1(f).

#### IV. Decision

Pursuant to *N.J.S.A.* 18A:12-29(b), the Commission hereby notifies Complainants and Respondent Giordano that it finds probable cause to credit the allegations that Respondent Giordano violated *N.J.S.A.* 18A:12-24(b) in Count 1, *N.J.S.A.* 18A:12-24.1(c) in Count 2, 18A:12-24.1(e) in Count 3, and *N.J.S.A.* 18A:12-24.1(f) in Count 4.

Pursuant to *N.J.A.C.* 6A:28-10.9 and *N.J.A.C.* 6A:28-10.7(c)(2), where the Commission finds probable cause to credit any allegations of prohibited acts, and where the material facts are not admitted by Respondent or where the Commission otherwise determines necessary, Complainant and Respondent shall be advised that the matter is being transmitted to the OAL for a hearing to be conducted pursuant to the Uniform Administrative Procedure Rules (*N.J.A.C.* 1:1 et seq.). The hearing shall be limited to those allegations, which the Commission found probable cause to credit. Complainants and Respondent Giordano are thus notified that this Complaint shall be transmitted to the OAL for a hearing, and that they will be notified about a date/time for such a hearing. *N.J.S.A.* 18A:12-29(b).

Additionally, Complainants shall no longer be a party to the Complaint. Where the Commission finds probable cause and transmits a Complaint to the OAL, the attorney for the Commission shall prosecute those allegations in the Complaint, which the Commission found probable cause to credit. *N.J.A.C.* 6A:28-10.7(b)(1).



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Robert W. Bender, Chairperson

Mailing Date: July 21, 2020

***Resolution Adopting Decision  
in Connection with C73-19 and C02-20 (Consolidated)***

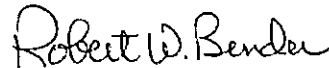
*Whereas*, at its meeting on June 23, 2020, the School Ethics Commission (Commission) considered the Complaint and Answer to Complaint (Answer) submitted by the parties in connection with this matter; and

*Whereas*, at its meeting on June 23, 2020, the Commission discussed finding probable cause to credit the allegations that Respondent Giordano violated *N.J.S.A.* 18A:12-24(b) in Count 1, *N.J.S.A.* 18A:12-24.1(c) in Count 2, 18A:12-24.1(e) in Count 3, and *N.J.S.A.* 18A:12-24.1(f) in Count 4; and

*Whereas*, at its meeting on June 23, 2020, and pursuant to *N.J.A.C.* 6A:28-10.9 and *N.J.A.C.* 6A:28-10.7(c)(2), the Commission discussed transmitting the within matter to the Office of Administrative Law for a hearing to be held at a later date; and

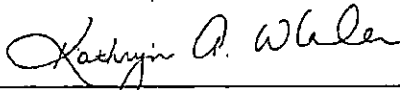
*Whereas*, at its meeting on July 21, 2020, the Commission reviewed and voted to approve the within decision as accurately memorializing its actions/findings from its meeting on June 23, 2020; and

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



\_\_\_\_\_  
Robert W. Bender, Chairperson

I hereby certify that the Resolution was duly adopted by the School Ethics Commission at its public meeting on July 21, 2020.



\_\_\_\_\_  
Kathryn A. Whalen, Director  
School Ethics Commission