



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. EEC 14401-11

AGENCY DKT. NO. C35-11

**IN THE MATTER OF JEROME DUNN AND
ALBERTO MARSAL, ELIZABETH BOARD
OF EDUCATION, UNION COUNTY.**

Geoffrey N. Stark, Deputy Attorney General, for petitioner School Ethics Commission (John J. Hoffman, Acting Attorney General of New Jersey, attorney)

Frank G. Capece, Esq., for respondents Jerome Dunn, Alberto Marsal, and Elizabeth Board of Education (Garrubbo & Capece, P.C., attorneys)

Record Closed: July 17, 2013

Decided: August 8, 2013

BEFORE **LESLIE Z. CELENTANO**, ALJ:

STATEMENT OF THE CASE

This is a complaint brought against an assistant superintendent of the Elizabeth School District (the "District"), the Elizabeth School District coordinator of network and computer services, and the Elizabeth Board of Education (the "Board") under the School Ethics Act, N.J.S.A. 18A:12-21 to -34. The School Ethics Commission found probable cause to credit the allegations that respondents Jerome Dunn and Alberto

Marsal violated the School Ethics Act, N.J.S.A. 18A:12-24(b), -24(c), -24(f). Respondents deny that they engaged in any conduct proscribed by the Act.

On July 20, 2011, a multi-count complaint was filed with the School Ethics Commission (the "Commission"). An Answer was filed on August 10, 2011. On November 23, 2011, the Commission referred the matter to the Office of Administrative Law (OAL), where it was filed on November 28, 2011. Multiple motions and cross-motions were filed and decided. An Order for Discovery was entered on May 22, 2012. An Order Denying Motion for Depositions was entered on November 19, 2012. An Order Denying Motion to Strike the Testimony of Susan Mettlen was entered on April 12, 2013. A hearing was conducted on January 9, 25 and 31, and March 18, 2013.¹ Post-hearing briefs were submitted, and following a telephone conference regarding the admitted exhibits, the record was closed.

TESTIMONY

Michelle Cetta

Michelle Cetta is employed as an administrative assistant with the Parking Authority for the City of Elizabeth. She has one child, who is almost five years old. She lives in Elizabeth on Country Club Lane with her mother and her daughter. Her daughter began attending the Eganoff School in the Elizabeth School District in September 2011. Cetta testified that she enrolled her in April 2011, at which time she had to provide all of her information to the District, including medical and emergency information, her daughter's birth certificate, and her telephone numbers and address. She testified that she gave the District her numbers, her daughter's father's numbers, his mother's numbers, and her mother's numbers, as well. The cell phone number she provided was 908-418-5651, a number she had for six or seven years. She testified that the number is not listed and her mother's cell phone number is not listed either, but that her home phone may be listed. Cetta testified that she has received calls on her

¹ The hearing required more days than had been originally scheduled, following the failure on two separate occasions of Susan Mettlen to appear to testify.

cell phone from the guidance office and from the counselor, to whom she had specifically given the number, but had no other calls from the school.

Cetta testified that she registered to vote when she turned eighteen, approximately twelve years ago, and registered as a Democrat. She does not believe she has ever switched her affiliation, but agrees she has voted Republican at times. Her voter registration form dated April 15, 2000, (P-5) was produced, and Cetta testified that she did not fill it out and that it was not in her writing. The telephone number on the form was her old home phone number. She also testified that a voter registration form changing her affiliation (R-17) dated December 15, 2009, was also not in her writing, but that the information contained therein is correct.²

Cetta testified that in June 2011 she received three campaign phone calls. The first one came from a restricted or private number, and was received on her cell phone. She stated that the message indicated that Assistant Superintendent Dunn was running for Senate and that she should come out and vote, and provided the date. The second call was the same message, also received on her cell phone. The third call was a message urging her to vote, but no mention was made of any candidate's name. Cetta testified that all three calls had different content but the same message, and she believes the speaker was the same on all three.

She testified she was surprised when she received the first call because her daughter was not in school yet, and it made no sense to her that there was a call from the school her daughter was not yet attending. She had not received any other calls from the school at that juncture and had never received any campaign calls on her cell phone. She indicated that she voted regularly. Cetta testified that her mother and her ex (her daughter's father) also received campaign calls, and she was upset that her number was used and given out. Cetta said she questioned the school about the calls she was receiving and asked how the caller(s) had obtained her phone number. She then asked her attorney about it, especially because she had not put her phone number on the voter registration form that she had filled out. Cetta stated that the call was from

² The writing appears to be the same on both documents.

an assistant superintendent, and so she was concerned she was “being approached to vote that way because [her] daughter was there.” She stated that her child’s father was not a registered voter and yet he received a call as well. Cetta indicated she is a committeewoman in her ward, but that has nothing to do with the filing of the complaint in this matter. She also testified she was not aware of all the interactions with the Board and politics in Elizabeth.

Cetta stated that because the first call definitely indicated it was the assistant superintendent calling she listened to it, thinking it was related to her daughter, who was about to start school in the district. She does not receive solicitation calls on her cell phone or home phone, rather, only receives calls from bill collectors.

Cetta testified that the mayor appoints the parking commissioners that she works for. She indicated she is the Democratic party representative for her district or ward, she is not sure which, but that she is not active currently, but was active at the time of the calls.

Cetta stated she was “aggravated” that she received calls on her cell phone regarding politics and angry that she was solicited as a parent. Cetta agreed that she hired an attorney because of the calls and signed a complaint, but refused to answer the question asking what she had paid the attorney for her “aggravation.”³ She testified that she did not know her attorney was an avid supporter of Dunn’s opposition in the primary. Cetta testified that she did not know whether Dunn had influence over Marsal or authority over him, but believed it to be true even though she had no factual basis for her belief. She also indicated that the only way Dunn could obtain her ex’s and her mother’s cell phone numbers was by having Marsal use his access as a network and computer coordinator to obtain them.

When asked about the “Bolwage for Mayor” sign on her front lawn, Cetta testified that she did not know he opposed Dunn. When asked about her 2009 voter registration form, Cetta testified it was not her handwriting, but agreed that her cell number was

³ There was no objection to the question; however, Cetta nevertheless refused to answer.

reflected on the document, which was obtained from the Union County Board of Elections. She also agreed that the information obtained on the internet from the site votermapping.com shows her address, party affiliation, date of birth, age, cell phone number and her vote frequency. Cetta testified she had no idea how her cell phone number is on her voter registration form, but agrees that anybody could have obtained it from the voter mapping document or the voter registration form, either then or now. Cetta indicated that she learned of the State Ethics Commission online and felt it was necessary to complain after she received the phone calls.

Rosemary Reilly

Rosemary Reilly is the property roll clerk in Elizabeth. She has resided at 4 Country Club Lane in Elizabeth since 1967. Her phone number is 908-576-8735 and her cell phone number is 908-418-6376. She testified that she uses her home phone for the computer and family only and uses her cell phone for all other calls. She also lists her home phone number on emergency call lists, including at her granddaughter's preschool. She testified that she never received an emergency call from the school, but that she did receive a political call on her home phone number and a message was left on her answering machine. She indicated that the caller identified himself as an assistant superintendent at the Board of Education who was running for office and urged her to vote. She had never received political calls before that and was a registered Republican at the time. She has not received any calls since. On July 22, 2011, Reilly changed her registration to Democrat from Republican, and she noted that her original married name is maintained in the records. At the time of the primary, one month earlier, Reilly was a Republican. The call she received came to the phone number 908-576-8735, which is her home phone number.⁴ Reilly then testified that it could have been one call or several calls, she does not remember. She stated that the calls were from Dunn, and indicated that he was the assistant superintendent and asked individuals to come vote for him. It struck her as odd to get the call, as she was not a Democrat, and that only Democrats can vote in a Democratic primary, and she had no idea why she would receive a call to vote in an election she could not vote in.

⁴ Reilly's answers to interrogatories indicate that she had received the call on 908-418-6376, which is her cell phone.

Reilly also agreed that she spoke to her daughter, Michelle Cetta, but testified that she did not know that Michelle had retained an attorney. She indicated that her daughter “gets incensed over a lot” and that she is very dramatic. Reilly agreed that she put the sign up on the lawn for Mayor Bolwage, as she does every year.

Reilly reported that Michelle indicated that she had been receiving calls. Reilly also testified that the writing on Michelle’s voter registration forms looks similar to Michelle’s writing.

Susan Albertson Mettlen

Susan Mettlen is currently the director of student assessment at the Union County College. Prior to that she was employed at the Elizabeth Board of Education from September 2006 to June 2012, as director of information systems and technology. She had the operational responsibility for the computer systems, including employee data and student data. She testified that she interacted with Dunn weekly or more often and that they attended some of the same meetings. She also supervised Marsal for five years. Joseph Goldfarb was also under her supervision for approximately five years. He is a systems analyst and worked in the data center. He also did a lot of training, ran payroll, and handled report cards and attendance letters and the like. Marsal was coordinator of networks and customer service and managed the network infrastructure. He was responsible for network connections to servers, for hardware, and for intrusion detection on the network. He also supervised giving out user ID’s and passwords and handled the launch of the PowerSchool system. He had no responsibility for network security.

Mettlen testified that she suspected information had been “passed to someone outside the District” when she received a lot of angry phone calls that political calls were being made to individuals, and some of those individuals did not even have children in the schools. She agreed that the District has an automated calling system and that there are separate lists. On some occasions the “call everyone” list is used, for

example, snow emergencies. She testified that complaints come in a day after thousands of people receive calls at 6:00 a.m.

She also testified that during the first week of June 2011 the first complaints about political “robocalls” came in. She initially thought that the school had sent out robocalls, and then received more complaints and realized that the District had not made any, and that someone else was making them. Mettlen testified that she even received one of the calls and wondered how the caller obtained her phone number. She testified that the message was from Dunn, who identified himself by name and title. Initially she thought it was him when she answered, and she then heard the robocall message. Mettlen does not live in that district and is not registered as a Democrat so she has no idea why she received the calls.

When the school wanted to make a call it would record the message and then pick which list of numbers the calls were to go to. Families provide numbers which are updated periodically and entered into PowerSchool. In March 2011 a campaign was mounted to update all the numbers, and flyers were sent out and given to all the students.

Mettlen testified that in the parent portal, parents can check grades and attendance, and on the administrative side all information is reflected, including parents’ names, child’s date of birth, address, contact information and all other student information. The parents can access their own information only and the teachers can access data for their classes. Administrators have access to the administrative side and can only access information for their particular school.

Mettlen agreed that she had access to all school data and that there were approximately twelve people who had full access, including Marsal. She was responsible to ensure network security and periodically tested the system to check the security. Mettlen testified that after she received several complaints she mentioned to her supervisor, Don Goncalves, that someone was using their numbers to make calls to people. Goncalves ignored her complaint, but said it should not be happening. Mettlen

indicated she had concerns prior to 2011 regarding security, and confirmed that no calls had been made from their system. Then she checked to see who had access, and several parents indicated that no one other than the District had their numbers. She then checked to see if anyone ran reports with names and numbers of everyone in the district. She testified that Marsal was not one who normally ran those, and that she checked the user logs, including those of Marsal (P-4). When she reviewed the login she circled two entries on page thirteen, both from April 18, 2011. The first entry reflected a login at 3:15 p.m. and a log off at 4:21 p.m. (sixty-six minutes), during which time it appears he reviewed twenty-eight pages. Mettlen testified that this was the first day of spring break and updates were being done, so all users were kicked off, and that those dates were circled because they were the only reports Marsal had ever run.

Mettlen also indicated that she received an email from Marsal (P-11) listing accomplishments for the week of April 18–21, which she found unusual because she did not typically receive weekly or even monthly updates, and that informal things such as those reflected on the email were verbally spoken.

The following Monday she received from Pearson, the provider of PowerSchool, an email relative to reporting updates, which she in turn forwarded to Marsal and others on the team Tuesday morning. The State reporting updates therefore did not take place until Tuesday, April 26.

Mettlen took screen shots of Marsal's report queue and the parties stipulated that all of the reports started at 3:17 and ended at 3:18 p.m. She testified that someone with District access can run all school rosters at the same time, and that all of the reports reflected on (P-14) were running simultaneously.

Mettlen testified that she called the Prosecutor's Office with her concerns that "this was happening." She agreed, however, that in August 2011 when she pulled the report (P-4) she was in charge of educational technology, and so was responsible for running similar reports at the same time for counselors. She testified that the document shows a login at a certain time, and when linked with the snapshots of reports, reflects

what was run at the time the person was logged in. In this case it was student demographic information. She does not know what was done with the information, and agreed that perhaps nothing was done with it.

Mettlen testified that she lives in Cranford, and that she received a robocall from Dunn indicating that he was running for office and would appreciate her support. Mettlen testified that she is a Republican and votes in the primary most of the time, and believes that she received the calls simply because she was an employee of the Board. She indicated that other friends in Cranford also received calls, as did friends in Linden and other towns. She also indicated that other employees of the Board received robocalls. Mettlen stated that she was terminated twenty-four hours before she was to testify before a grand jury. Mettlen stated that Marsal has never been to her home and has never had access to her home computer. She also has never asked Dunn why she received one of his robocalls. She informed Goncalves (whom she reported to) that they were getting a lot of calls complaining that the Board was making political calls, but in fact they were not. Goncalves said "that shouldn't happen." Mettlen verified that the District had not made any robocalls during that period of time. She indicated that the complaints came in either to the superintendent's office, the switchboard or the schools, and that all were transferred to her office. She stated that any time automatic calls were made by the District she would get complaints from people who did not have children in the school district, because the calls are made at 6:00 a.m. People asked to be taken off the list, and their phone numbers were passed on to Hector, or whoever made the entries in the database, so that those numbers could be removed.

Mettlen testified she does not know Michelle Cetta, but knows that they have the same attorney.

Joseph Goldfarb

Joseph Goldfarb has been employed for eleven years in the District's Information Technology (IT) Department. He is a systems analyst, responsible for various software systems, including PowerSchool and the State reporting requirements. He supports the

end users who have problems with the system and instructs people in its use. PowerSchool tracks demographics, grades, attendance, discipline and family contact information. He is fully familiar with PowerSchool.

Goldfarb referenced the list of Marsal logins from September 4, 2010, to August 9, 2011 (P-4), indicating that the document was printed on August 15, 2011. The document was not created in the regular course of business of the District, and it was not typically run; indeed, no one is permitted to access and print this type of report without Board permission. He testified that the report does not show what the person did while on the PowerSchool system. On page 13, two entries are circled, but they reveal nothing about Marsal's activities. It was spring break, and a new version of PowerSchool software was being upgraded into the system; the upgrade was done during spring break so it could be completed when the children were not in school. On Monday, April 18, Marsal emailed everyone (R-6) indicating that the system would be down all day, due to PowerSchool maintenance. Goldfarb testified that as reflected on page 13 (P-4), Marsal logged in at 3:15 from his desk at his District office and the system logged him off at 4:21.⁵ Marsal also logged in at 5:41 p.m. and off at 5:45 p.m.; however, this login was from his home, which has a different IP address, and was from a Mac computer, which Marsal has at home. Goldfarb testified that Marsal probably logged in from home to check on the system-upgrade status.

Regarding the eighteen pages with the same title of PowerSchool Report (P-14), the screen shot is of a user's report and cue screen. It shows reports that were run and provides the data. The first page (183) indicates that the job was started at 3:17 p.m. and ended at 3:18 p.m. It indicates that Marsal created one class roster which lists the teacher of the class and the four students enrolled. Only one job is listed in the report cue, otherwise it would show all the reports, and would show a discrete entry for each separate school. The school name at the top of the page means that is the location Marsal chose to display, and is not applicable to what he printed. Each time someone logs in to PowerSchool it shows the location, and the report cue is district-wide. If a location was not chosen, the report would say District Office. An individual could sit in

⁵ The system automatically logs a user off after sixty minutes of inactivity, and, accordingly, Marsal was active on the system for six minutes.

an office and print identical reports, each with a different school name on the top. Goldfarb testified that he reproduced what is in P-14, printing report cues with a different name at the top of each (R-28). He testified that if Marsal had printed the class rosters from all the schools it would have shown multiple reports in the report cue and not just one. Exhibit P-14 is a single report printed at one time. Goldfarb testified that he clicked into the report cue and obtained the job name to see what roster was run, and Exhibit R-28 shows the details of the April 18 report cue of Marsal. The actual single report Marsal created on April 18, 2011, between 3:17 p.m. and 3:18 p.m. (R-30) shows the name of one teacher and four students enrolled in that class. No telephone numbers were printed.

Goldfarb testified that he printed Exhibit R-31, which shows the enrollment information for Michelle Cetta's daughter as of March 24, 2011. It was an early childhood registration and she started school September 7, 2011. Goldfarb testified that if Marsal had printed the entire district with all the telephone numbers on April 18, 2011, Michelle Cetta's daughter's information would not have appeared anywhere. The report on page 13 (P-4) reflects that the report was created between 3:17 and 3:18 p.m. by Marsal and that he was auto-logged off after sixty minutes because the security setting page in PowerSchool automatically logs off after sixty minutes of inactivity. Goldfarb testified that therefore the first entry on page 13 of Exhibit P-4, which reflects sixty-six minutes, means that Marsal was actually on for six minutes at that time. The date the reports were printed is not reflected in the copies initially provided; however, a different copy of page 216 shows a date at the bottom of July 22, 2011 (R-40). Goldfarb testified that someone else could have logged in as Marsal on July 22, 2011, if that individual either knew his password or had the ability to change his password. All passwords are secret, but if an individual has rights in PowerSchool he or she can go in and change a password, and the old password would then not work any longer. If someone forgets their password or needs a new one they call him and he resets it, and then the person can go in and change it again. He testified that Mettlen could have changed Marsal's password on July 22, 2011, from anywhere via PowerSchool.

Goldfarb testified that R-29 and R-30 contain the only information run by Marsal on April 18, 2011, and that it took him only a couple of minutes to obtain this information. He also indicated that he printed out P-14 using Marsal's name and ran R-28 logged in as Marsal. He also indicated that P-4 was printed in August 2011, but he cannot tell who printed it, and that document has no business purpose and is not typically run, as there is no reason to see a login report for one user for an entire year.

Donald Sheehy

Donald Sheehy has been employed in the Technology Department of the Elizabeth Board of Education since September 1993. He is currently a network administrator and supports the infrastructure. He is fully familiar with PowerSchool and all of the technology used by the District. He testified that Exhibit P-14 is comprised of report cues for Marsal, and that the April 18 report was run between 3:17 p.m. and 3:18 p.m. He recalls that one of the reports indicated that it was printed on July 22, 2011. On their face they appear to indicate that Marsal printed them and that Marsal's prior login was July 2, 2011. He testified that user ID number 54 created those reports, and that 54 is Marsal's ID number. The login under Marsal's number on July 22 was at 6:32 p.m. and the log out indicated 7:41 p.m. The IP address logged in from under Marsal's name on July 22, 2011, is 68.36.182.142. The login reflects the full IP address for that date and time and shows the full PowerSchool address. An IP address can only be at one physical location, not multiple locations. (R-35; R-36.) The second page of R-36 reflects two different users logging in on July 22, from the IP number reflected above, which is not a school IP address. It is a public IP address, leased from a company such as FiOS or Comcast (R-37) and this particular one is owned by Comcast Cable (R-35). Sheehy printed both pages (R-36) reflecting the login entries for everyone who logged in on that day, and the only login by user 54, Marsal, was a single login at 6:32 p.m. from IP address 68.36.182.142; however, the documents also reveal that a second person logged in to PowerSchool that day from this particular IP address, and the other person was user 55, Susan Mettlen, who logged in at 6:18 p.m. Marsal only logged in on three occasions between July 2, 2011, and August 9, 2011, including once on July 22, 2011 (R-33). However, the documentation reveals that two people logged in to

PowerSchool that day from the same IP address: user 55, Mettlen, at 6:18 p.m. with a logout at 6:31 p.m., and user 54, Marsal, logging in one minute later at 6:32 p.m. and logging out at 7:41 p.m., sixty-nine minutes later.

Sheehy testified that based upon the multiple logins over many months by user 55 (Mettlen) from that IP address, he believes it belongs to Mettlen. If Marsal logged in from this particular address on July 22, 2011, he would have had to be at Mettlen's home, in order to log in a minute after she signed off. The records indicate that Marsal's logoff was at 7:41 p.m., so he would have still had to have been at Mettlen's computer to log off after sixty-nine minutes. He testified that someone could log in as another person after changing their password, but cannot change an IP address, and, accordingly, Mettlen must have logged in, changed Marsal's password, and then logged back in one minute later as Marsal. He testified it was a summer Friday and that the staff only works Monday–Thursday and is off Fridays.

Harriet Bartley

Harriet Bartley has been employed by the Elizabeth Board of Education for twelve years and is an administrative secretary 3. She has reported to Assistant Superintendent Dunn for the past approximately six years. Calls to Dunn go through her. She has never received any calls for Dunn from Marsal and never received any visits from Marsal. She is not aware that Dunn and Marsal have ever had lunch or socialized, and they have no overlapping duties. She has never seen any correspondence between Marsal and Dunn, and had no role whatsoever in the Dunn campaign. She does not live in the district and could not even vote for him.

Valerie A. Dunn

Valerie Dunn is the supervisor of special services for the Elizabeth Board of Education. She indicated that although Michelle Cetta testified that she called Dunn to complain about robocalls, no such thing ever happened, and she would have remembered if it did. She testified that has nothing to do with her job and it would have

stood out to her, and that if she had received such a call she would have referred it to Harriet Bartley, who takes complaints, or to Concalves' secretary.

Bruce Elflein

Bruce Elflein has been the social studies supervisor at the Elizabeth Board of Education since 1989. He has a variety of responsibilities, including writing curriculum and observing teachers. He lives in Cranford and has participated in Republican primaries in Cranford. He has also worked with Susan Mettlen on various school projects, and they were friendly in the office but they did not socialize.

Elflein indicated that Mettlen's testimony wherein she stated that he (Elflein) had received political robocalls from Dunn and complained to her about it was absolutely false. He never received a robocall and never complained about any such thing to Mettlen. He did have conversations with Mettlen about the 2011 campaign and the robocalls that she indicated people had received. He stated that this came up in general conversation, and that she asked him if he had ever received one and he said that he had not, but that he had received general campaign correspondence.

Alberto Marsal

Alberto Marsal is employed by the Elizabeth Board of Education as coordinator of computer and network services, a job he has held for over ten years. Prior to that he was employed at World Bank. He is originally from Cuba. He testified that he never accessed school records to obtain confidential cell phone numbers to help with any campaign. He does not work with Dunn during the day, has never been out with Dunn socially, and has no contact with Dunn socially. He testified that he never obtained or even sought to obtain private records and that no one ever asked him to do so. He testified that all users with access to PowerSchool (over 400 names) could access private information, which would violate school policy unless there was legitimate reason to do so, for example, a principal needed a list at his or her school. No one ever

asked him to turn over any information to the Dunn campaign, and he would have reported it if he had been asked.

On April 18, 2011, the upgrade of the latest release of the core application for PowerSchool took place. School was closed, so he made the changes. When the main upgrade is done, whatever State reports are available are also upgraded. During the year multiple requests come in from the State for reports, and his role in the upgrade is as team leader, managing the technology group and making sure that servers are up 24/7. He checked on the upgrade status from his home, and indicated that teachers can access PowerSchool from home to enter information. The system balances all users who are on at the same time among all the various servers; for example, if a hundred people are on the server and there are ten servers, they would balance the system so that ten were on each server.

Marsal testified that his certification (R-5) was filed when the Cetta complaint was received. He indicated that paragraph four was not accurate because he did not realize he had the type of access claimed. His main role is to ensure that servers are up and running and the reporting engine is available, but he does not create reports. In his follow-up certification (R-6) he acknowledges the error in R-5 and explains his primary role. He did not know he could generate detailed reports, as it is not his function.

Marsal printed the roster of a single class of four students (R-29), which reflected no phone numbers. This is the only report he ran and it took one minute, as Mr. Goldfarb testified. The system automatically logs off after sixty minutes of inactivity, and although the user log says sixty-six minutes he was only on for six minutes, and then an hour later it logged off by itself because there had been sixty minutes of no activity.

Marsal testified that Pearson, the vendor that creates the software for PowerSchool, puts together what the school needs to do in order to comply with the

State reporting requirements. On April 18 they upgraded the core main system to the latest upgrade version. On April 25 it was updated.

Marsal has never been to Mettlen's home. At some point during that summer he could not log in, as his password did not work and he had no idea why. Now he sees that based upon the logins of IP addresses provided by the internet providers, there are two entries at least where someone logged in as him under Comcast, which he does not have in his home. He learned this through Goldfarb's testimony and was shocked because he has been accused of something he did not do.

Marsal supervises those doing the upgrades to the system and makes sure that things go smoothly. He asks that people log in to make sure everything is working. Updates are required approximately four times a year based upon changing State reporting requirements, but the system upgrade is done once a year.

Marsal indicated that Susan Mettlen was in charge of the computer applications at the time and that he reported to her. Running reports was not within his responsibilities, but he did run a test report on April 18, which is the only report he has ever run (P-14). It was the date of the upgrade and he decided to run one, which he did only after asking staff if they had checked the system and no one had run a report, and so he decided to.

Jerome Dunn

Jerome Dunn was born in Athens, Georgia, and went through a segregated school system. He attended Newark University, now known as Kean University, and is in the Kean Football Hall of Fame. He currently serves as a referee and has been a member for thirty-five years of the International Association of Approved Basketball Officials. He is also a member of the Basketball Commission for the State of New Jersey.

Dunn testified that he is assistant superintendent of family and community outreach, meaning he is the liaison between the Board and the community. He also oversees several schools and the entire athletic program. He also handles the Elizabeth Direct System (EDS), which handles any issues related to the schools, whether involving personnel or the buildings. In 2011 he decided to run for the State Senate and ran in the Democratic primary. He resides in Hillside. He has been with the Elizabeth School District for forty-one years and never had any discipline.

During the campaign he learned what a robocall was, and read prepared statements as part of the campaign to go to voters in all four towns. He recorded the statements that the political consultant prepared, and testified that neither statement referenced his position as assistant superintendent of schools. He did not record any other statements and was told that once recorded, the calls would go to residents in the 20th district, who lived in Union, Roselle, Hillside or Elizabeth. He read the statements into a tape recorder at the campaign site. Barry Brendel was there and made sure that whatever company was doing the calls received the recordings. There were targeted Democratic voters in those four towns, and a call would never be made to a Republican woman in Cranford.

Dunn knows Marsal as a District employee and sees him if there is a district-level meeting. He has never had any discussions with Marsal regarding robocalls, lists, or campaign strategy, and has never socialized with him. If they see each other they just say hello or goodbye. Marsal was not present at the time the recordings were being made. Neither he nor anyone else from his campaign ever asked Marsal for any data. Dunn has no supervisory role or control over Marsal's employment or raises. Dunn testified that he is on the instructional side and Marsal is on the operational side and that their worlds do not intersect.

Dunn testified that he has access to district-wide information regarding parents and students but has never used any of that information for his campaign, nor has Brendel ever asked him for any information. He listened to both recordings, which were the only two he made, and there is no reference at all in either recording to his title.

Dunn agreed that the district-wide information could be useful because it contains demographic information regarding the entire district as provided by parents and it could contain information not available anywhere else and therefore be valuable to a campaign.

The primary was June 11, 2011, and the last Republican elected in the district was about forty years ago. The Democratic primary is vigorously contested. Brendel served as a consultant to Dunn in the campaign and he prepped Dunn to go out and meet and greet people and be prepared on issues.

Dunn testified that there are no political profiles in students' records and there is no benefit, in terms of targeting robocalls, in having student records. No political affiliation or religion is reflected in school records either. Dunn testified that he was never asked by Brendel to provide any information from school records and he never provided any.

Barry Brendel

Barry Brendel has been a political consultant for thirty-five years and works for campaigns and candidates. He provides advice to candidates on positioning themselves and how to communicate. He was hired in 2011 by "Democrats for Change," which included the candidacy of Dunn, and he consulted throughout the campaign.

He testified that a robocall is a recorded message of the candidate which is put through an auto dial. Hundreds of calls are made per minute and thousands of people can be called. He feels that robocalls are utterly worthless and a total waste of time, but campaigns always want them. The campaigns try to narrow the targets to have the maximum impact and want to contact only those who need to be contacted. Brendel testified that there are zero odds of a Republican in Cranford receiving a robocall, and indicated, "that call didn't come from the Dunn campaign," and added, "I'd love to hear

the call.” He indicated that someone out of the district cannot be persuaded, as they cannot vote. If an individual is not located in the legislative district the individual is not on the list, and no Republicans can vote in a Democratic primary so they are not on the list. He taped two robocalls for the campaign, and after polling, narrowed the issues and limited the robocalls to two and a half sentences, because people hang up. He never used the phrase “assistant superintendent of schools,” as that would have been “off message.” He needed to get the Dunn message out, and there was no room for irrelevant “noise” such as his title, which he said would have been political malpractice. After the recordings were recorded, loaded and melded with the target voter file, they were put through an automatic dialer and the message was delivered. Only Democrats in Elizabeth, Union, Hillside and Roselle received the calls, and not all the Democrats, rather, only the target voters. The list was obtained from the Union County Board of Elections. They had requested a list of all Democrats in the 20th legislative district, and then pared the list down to those who had voted in the last few elections. The cost of the robocalls was five or six cents each in that campaign, and the calls are done at the end of the campaign.

With regard to the voter registration form used for party affiliation dated December 15, 2009, which Cetta asserted was a forgery, Brendel testified that if it had not been accepted and gone through the process she would not have been listed as a Democrat. As to the voter registration application (P-5) dated April 15, 2000, Cetta would have been in the voter list due to that application, but would not show up on the list they requested because she was not a registered Democrat then.

Brendel described the vendor known as Labels and Lists as one of the best for political campaigns. After searching Cetta’s name, a map appeared showing all of her voter information. The map indicates where she lives, her date of birth, whether she votes and her party registration. The voter frequency is key because usually there is less than a 40 percent turnout and they want to target people that they know vote. Cetta voted in the three prior elections, so she would be targeted as a likely voter and probably got a robocall. The campaign printed out their voter file of key targets (R-15) and Cetta is listed, so her number would have been dialed twice. It indicates she is a

Democrat, and lists her phone number, the date of registration (May 14, 2000) and her address.

Brendel testified that he never met or spoke to or received any material from Marsal, and could not pick Marsal out in the court room. No one ever brought him anything from Marsal as an intermediary, and he also has no information from Board of Education files, as none were used in the campaign. He testified that information regarding students and parents is not applicable because he would have no idea if any are citizens, registered, registered as Democrats, or a prime Democrat, and if they were, he would have them in the file already, so no school information is of any use at all.

Regarding the sign (R-18), it is very hard to get people to put signs up on their lawn unless they are very committed, for example a County committeeperson like Cetta. Someone putting up a sign up like this means they are pretty active and committed (in this case to the opposition). Regarding the testimony from Cetta's mother, Rosemary Reilly, she provided the phone number 418-6376, and when Brendel turned his computer on in the court room and retrieved the complete list as provided to the DAG, that phone number was not on his list. A box popped up on the screen that said, "not in the database." Reilly also provided another number, 576-8735, and when Brendel searched for that number he received the same popup; that number was also not in the database. As a result, he testified it is impossible that she received a robocall; she is not even in their file and therefore could not receive a call. When he entered Mettlen's phone number, because she claimed she received a robocall to the number she provided, 709-0678, he received the same popup; that number also was not in the data file. He testified that Mettlen is what he would call a "triple no" and could not have received a call because 1) she is a Republican, 2) she lives in Cranford and 3) her telephone number is not in his file. Brendel proceeded to play the two recordings of the robocalls and there was no reference in either one to Dunn's position as assistant superintendent.

Brendel worked for the campaign for about three months, during which he did polling, developed a message, determined the most important issues, and narrowed them to a top few issues. He developed a direct-mail campaign and believes they did one television spot. One went out a few days before the election and one on election day. The campaign also hired the firm of Christin Stella and he was the only one who spoke with Stella; no one else dealt with him.

Christin Stella testified via conference call (as agreed to by all parties)

Christin Stella is a project manager for a research firm and data-collection house involved in handling robocalls. He explained that the computer calls someone and plays a digitized message. He has a list, and the message is played to the phone numbers on the list. Brendel sent him recordings to be used in making robocalls for the Dunn campaign. There were two messages recorded and a few thousand calls made. Brendel sent him the list and the messages and told him when to play them, and the system played once the call had been picked up by either a person or an answering machine. Even if an answering machine picked up, another call was not made to that number. Stella testified that he relied solely on the list provided by Brendel. He stated that to set up the system takes a minute or two, and he can have the calls out within fifteen to twenty minutes once he has the list and the recordings.

Melanie Padilla

Melanie Padilla's certification was admitted in lieu of her testimony, for the limited purpose of rebuttal to the testimony of Mettlen, who testified that she received many complaints regarding robocalls. Padilla's certification sets forth that she is the administrative secretary at the Board and her responsibilities include handling the customer care line to accept calls and complaints of citizens. Any complaints relating to robocalls were referred to Hector Porto and never to Susan Mettlen, and at no time during her responsibility for the customer care line has she ever received any complaint from any individual regarding robocalls from any political campaign, including that of Assistant Superintendent Dunn.

Donald Goncalves

Donald Goncalves' certification was admitted in lieu of his testimony. Mr. Goncalves is the assistant board secretary with the Elizabeth Board of Education, and during the months of April through June 2011 Mettlen reported directly to him. At no time during his supervision of Ms. Mettlen did she ever indicate to him that any citizens of Elizabeth had complained to her that they had received political robocalls from anyone, contrary to the testimony of Mettlen that she informed her supervisor, Goncalves, of the robocall complaints. The automated calling system in the district is used solely for school matters such as closings, delays or announcements of events and these functions are part of his responsibilities.

FINDINGS OF FACT

Based upon the testimonial and documentary evidence presented and having had the opportunity to observe the demeanor of the witnesses and assess their credibility, I **FIND** the following to be the operative **FACTS** in this case:

At all relevant times, Jerome Dunn was employed by the Board of Education of the City of Elizabeth as the assistant superintendent of schools. Dunn was a candidate for the New Jersey State Senate for the 20th Legislative District in the Democratic primary held on June 7, 2011.

At all relevant times, Alberto Marsal was employed by the Board of Education of the City of Elizabeth as coordinator of network and computer services.

Michelle Cetta is an administrative assistant with the Elizabeth Parking Authority. She resides on Country Club Lane in Elizabeth with her mother and daughter.

Michelle Cetta, the original complainant in this matter, registered her daughter for school in the District in March 2011. At the time of the registration she provided the

District with family contact telephone numbers, as required, in case of emergency or for other school purposes. The numbers she provided included her cell phone number, her mother Rosemary Reilly's cell phone number and the cell phone number of her child's father, Michael Mirro.

In June 2011, prior to the Democratic primary held on June 7, 2011, in the 20th Legislative District, Cetta received one prerecorded political phone message ("robocall"). At the time she received the call, Cetta's daughter was not yet in school, and did not commence attending school in the District until September 2011. The robocall message made no mention of Mr. Dunn's position as an assistant superintendent of schools in the District.

Cetta retained an attorney and signed a complaint following the receipt of the robocall. Cetta's telephone number was obtained by the campaign from the Union County Board of Elections. Cetta's name, address, voting pattern and telephone number are available to any member of the public over the internet from a vendor known as Labels and Lists. Cetta is a committeewoman in her ward and had a "Bolwage for Mayor" sign on the front lawn of the home in which she resides.

Rosemary Reilly is the property roll clerk in Elizabeth and is Michelle Cetta's mother. She, Michelle and Michelle's daughter all reside together. At the time of the primary election Reilly was a registered Republican. Reilly placed the sign on her lawn for Mayor Bolwage and indicated she does so every year. She also indicated that her daughter ran for election on a party line with Jerome Dunn's opponent. Reilly believes the writing on Michelle Cetta's voter registration forms looks similar to her daughter Michelle's writing. Reilly did not receive any robocalls.

Susan Mettlen was employed by the Board from September 2006 to June 2012 as director of information systems and technology. She had the operational responsibility for the computer systems, including employee data and student data. The District has an automated calling system and there are separate lists depending on the purpose of the call, whether related to snow emergencies or other school business.

When the District needed to make a call it would record a message and pick which list of phone numbers the calls were to go to. Family numbers were updated periodically and entered into PowerSchool. The PowerSchool system was upgraded on April 18, 2011. The State reporting updates took place on April 18, 2011, and April 25, 2011. On April 18, 2011, the date of the system upgrade, Alberto Marsal logged in at 3:15 p.m. and logged off at 4:21 p.m. (sixty-six minutes). He ran a report commencing at 3:17 p.m. and ending at 3:18 p.m. The system automatically logs off after sixty minutes of continuous inactivity, and, as such, Marsal was actually on the system for six minutes and was automatically logged off after there was no activity for the remaining sixty minutes of the sixty-six minutes' duration.

When Marsal logged in on April 18, one job was started at 3:17 p.m. and concluded at 3:18 p.m. During that one minute Marsal created a class roster for one class, which reflects the teacher of the class and the four students enrolled. If class rosters from all the schools had been printed, all of the reports would have been reflected in the report cue, instead of just one. The report created shows one class, the name of one teacher and the four students in the class, and reflects no telephone numbers. Even if the entire District and all telephone numbers had been printed on April 18, 2011, Cetta's daughter's information would not have appeared anywhere, as she did not begin school until September 7, 2011. On April 18, 2011, Marsal was active on the PowerSchool site for six minutes, followed by sixty minutes of inactivity, at which time he was auto logged off.

Mettlen resides in Cranford and is registered as a Republican. Marsal has never been to Mettlen's home and never had access to her home computer. Mettlen did not receive any robocalls.

Over 400 individuals employed by the Elizabeth School District have the ability to access family contact numbers in the school district records and print them.

The single report Marsal printed on April 18, 2011, was a class-roster report from the Thomas Jefferson Arts Academy, and the information on the report consisted of the

names of the teacher and four students and no telephone numbers. This was the only activity on Marsal's part on that date. April 18, 2011, was also the date on which the PowerSchool system was upgraded; the update was done on that day because it was spring break and no students were present. There was also a New Jersey State Report update accomplished on April 18, 2011, along with the PowerSchool upgrade, and another State Report update accomplished on April 25, 2011.

The PowerSchool record of logins to the system by Marsal reveals logins on July 2, 2011, July 22, 2011, and August 9, 2011. (R-33.) Marsal's user ID number in the PowerSchool system is 54. The records of PowerSchool logins reveal a July 22, 2011, login under Marsal's name showing a login time of 6:32 p.m. and logoff time of 7:41 p.m., a total of sixty-nine minutes. (R-34.) The records also reveal the internet protocol (IP) address of the computer from which the July 22, 2011, Marsal logon was made. The IP address set forth at the top right of the login report indicates the unique IP address of 68.36.182.142, which the unrefuted proofs established to be the IP address of Susan Mettlen, and accordingly established that it was Susan Mettlen who logged in as Marsal on that date at 6:32 p.m., logging off at 7:41 p.m. Immediately prior to that logon under Marsal's name, Mettlen had logged in from the identical IP address, later established to be her home computer IP address, at 6:18 p.m. and logged out at 6:31 p.m., logging back on one minute later as Marsal. The list of all logins to the PowerSchool system between December 14, 2009, and January 22, 2011, from IP address 68.36.182.142 (R-38) reveals an unbroken string of twenty-three logins from that IP address by Mettlen only. The proofs established that in order for Marsal to have logged on from Mettlen's IP address at 6:32 p.m., he would have to have been at her house, at her computer at that time, and remained there until 7:41 p.m. to log off. The proofs established that Marsal has never been to Mettlen's home. Marsal was unable to access PowerSchool at some point during the summer of 2011, as his password no longer worked, and as a result he had to setup a new password. The testimony established that this could happen if someone with access to PowerSchool went in and attempted to log on as another individual and could not, they could simply change that individual's password, meaning the old password would no longer work when the person it belonged to attempted to log on. At some point during the summer of 2011,

Marsal required the assistance of Mr. Goldfarb, a systems analyst with the Board who is familiar with and qualified to perform all functions and duties of the Board's IT Department in the PowerSchool system, to establish a new password for him, as his no longer worked.

CREDIBILITY

It is the obligation and responsibility of the undersigned to weigh the credibility of witnesses in this matter in order to make a determination. Credibility is the value that a fact finder gives to a witness's testimony. The word contemplates an overall assessment of a witness's story in light of its rationality, internal consistency, and "manner in which it hangs together" with other evidence. Carbo v. United States, 314 F.2d 718, 749 (9th Cir. 1963). Credible testimony has been defined as testimony that must proceed from the mouth of a credible witness and must be such as common experience, knowledge, and common observation can accept as probable under the circumstances. State v. Taylor, 38 N.J. Super. 6, 24 (App. Div. 1955). A fact finder is expected to base decisions of credibility on his or her common sense, intuition or experience. Barnes v. United States, 412 U.S. 837, 93 S.Ct. 2357, 37 L. Ed. 2d 380 (1973).

There is no mechanical formula for determining the truth. One factor to determine which party's version of the incident has the "reasonable probability of truth" is that the "interest, motive, bias, or prejudice of a witness may affect his credibility and justify [the trier of fact], whose province it is to pass upon the credibility of an interested witness, in disbelieving his testimony." State v. Salimone, 19 N.J. Super. 600, 608 (App. Div. 1952). Further, "[a] trier of fact may reject testimony because it is inherently incredible, or because it is inconsistent with other testimony or with common experience, or because it is overborne by other testimony." Congleton v. Pura-Tex Stone Corp., 53 N.J. Super. 282, 287 (App. Div. 1958). Also, it is the function of the trier of fact to determine credibility based on the internal consistency or improbability of the witnesses' testimonies using experience and everyday affairs to give additional guidance. Proof of the charges depends on the credibility of the evidence. Thus, I

have also considered factors such as the witnesses' demeanor, as well as external measures of credibility.

Resolution of the contradictions and incongruities in testimony can only be accomplished by assessing the credibility of the witnesses. Accordingly, in determining credibility I considered the following customary criteria:

- The appearance and demeanor of each witness;
- The manner in which the witness testified;
- The interest of the witness in the outcome of the proceeding, if any;
- The means of the witness to obtain knowledge of the facts;
- The power of discernment of the witness;
- The ability of the witness to reason, observe, recollect and relate;
- The possible bias, if any, in favor of the side for whom the witness testified;
- The extent to which, if at all, each witness was either corroborated or contradicted, supported or discredited by other evidence;
- Whether the witness testified with an intent to deceive this administrative tribunal;
- The reasonableness or unreasonableness of the testimony the witness has given; and
- Any and all other matters in the evidence that serve to support or discredit the testimony of the witness.

I **FIND** Dunn and Marsal to be believable and persuasive, and their demeanor to be highly credible, and I **FIND** their testimony to be extremely credible and hence part of the operative **FACTS** in this case. I also **FIND** the testimony of all of respondents' witnesses to be far more credible than that of petitioner's witnesses; indeed, I **FIND** the testimony of petitioner's witnesses to be evasive, and riddled with inconsistencies and illogical assertions. The testimony of petitioner's witnesses in each case suggests a lack of candor, and the testimony of each was entirely unconvincing and no competent evidence substantiates any of their assertions.

DISCUSSION AND CONCLUSIONS

The burden of proof on the petitioner School Ethics Commission (“Commission”) is that it must “establish the truth of the charges by a preponderance of the believable evidence.” In re Polk License Revocation, 90 N.J. 550, 560 (1982) (quoting Atkinson v. Parsekian 37 N.J. 142, 149 (1962)) (emphasis added). “Under the preponderance standard, ‘a litigant must establish that a desired inference is more probable than not. If the evidence is in equipoise, the burden has not been met.’ Biunno, Current N.J. Rules of Evidence, comment 5a on N.J.R.E. 101(b)(1) (2005).” Liberty Mut. Ins. Con. v. Land, 186 N.J. 163, 169 (2006).

In establishing the School Ethics Act the New Jersey Legislature declared that local school administrators “must avoid conduct which is in violation of their public trust or which creates a justifiable impression among the public that such trust is being violated.” N.J.S.A. 18A:12-22(a). Additionally, the Legislature determined that school administrators should “have the benefit of specific standards to guide their conduct and of some disciplinary mechanism to ensure the uniform maintenance of those standards among them.” N.J.S.A. 18A:12-22(b).

To accomplish its objectives the Legislature established standards of ethical conduct by which all school officials must abide. N.J.S.A. 18A:12-24. Respondents are charged with having violated N.J.S.A. 18A:12-24(b), N.J.S.A. 18A:12-24(c) and N.J.S.A. 18A:12-24(f), which provide as follows:

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.

.....

c. No school official shall act in his official capacity in any matter where he, a member of his immediate family, or a business organization in which he has an interest, has a direct or indirect financial involvement that might reasonably

be expected to impair his objectivity or independence of judgment. No school official shall act in his official capacity in any matter where he or a member of his immediate family has a personal involvement that is or creates some benefit to the school official or member of his immediate family.

.....

f. No school official shall use, or allow to be used, his public office or employment, or any information, not generally available to the members of the public, which he receives or acquires in the course of and by reason of his office or employment, for the purpose of securing financial gain for himself, any member of his immediate family, or any business organization with which he is associated.

[N.J.S.A. 18A:12-24.]

The charges, in essence, are that Marsal utilized the access he had to obtain family contact telephone numbers from District records and provide them to Dunn's election campaign, and that Dunn, in turn, utilized that information to send political robocall messages to those numbers. The allegations also include that Dunn referred to himself as the assistant superintendent of schools in the robocalls sent out to those numbers.

Short shrift may be made of the substance of the complaint in this matter. Respondents correctly articulate in their brief that not only has the Commission produced no credible evidence that Marsal acquired telephone numbers from school records and supplied them to the Dunn campaign, rather, "it has produced no evidence at all that Albert Marsal acquired phone numbers from school records and supplied them to the Dunn campaign." The evidence unequivocally established that neither Rosemary Reilly nor Michael Mirro received any robocalls. Indeed, Michael Mirro did not testify nor submit a certification, and Rosemary Reilly's testimony was entirely unconvincing. The District did not have Ms. Reilly's home phone number, rather it had Ms. Reilly's cell phone number as provided by her daughter, Michelle Cetta, whose own daughter was not yet attending school, and as such the number would not have appeared on any District telephone list. Moreover, Reilly's testimony was that she received the robocall on her home line and that number was not reflected in any District

records. Barry Brendel testified credibly, and demonstrated from the list on his laptop that neither Rosemary Reilly's name nor any of her telephone numbers appeared on any school list (R-14). Moreover, Reilly was a registered Republican at the time.

Unrefuted proofs establish that Michelle Cetta's name, address, vote-pattern information and the telephone number she provided to the District are available to any member of the public on the internet. The same telephone number is also available as a matter of public record from Cetta's voter registration form filed with the Union County Board of Elections.

Unrefuted proofs also establish that Christin Stella, the Florida consultant who owns the robocall equipment and sent out the robocalls, was given the numbers by Barry Brendel. If Marsal had acquired the numbers and provided the information to the campaign, he would have had to deliver them to Brendel, who in turn would have to have given them to Stella. Brendel testified credibly that he was never approached by anyone from the District with any list of names or numbers, and had no idea who Marsal was and could not identify him at the time of hearing. Moreover, a family contact telephone list would have been useless to the campaign, as there would have been no way to distinguish registered Democrats from unregistered voters, registered Republicans or unaffiliated voters, and the list would have been of no value. Cetta had no personal knowledge of Marsal having acquired any District family contact numbers, but rather relied upon the "findings" of her attorney. There is no evidence whatsoever in the record that Marsal ever accessed any telephone numbers of any family in the District. The only testimony suggesting that Marsal did access District telephone numbers was the testimony of Susan Mettlen; however, respondents have demonstrated irrefutably that even if Mettlen's testimony was credible and believable, which it was not, it would have been impossible for Marsal to acquire the only telephone numbers at issue here, those of Cetta, Reilly and Mirro, because none of those numbers appeared on any school district lists until Cetta's child began attending class in September 2011. Nonetheless, no witness for the Commission offered any evidence or testimony, credible or otherwise, that Marsal accessed, acquired or provided Dunn's campaign with even a single family contact telephone number.

With regard to the allegations that respondent Jerome Dunn identified himself as “the assistant superintendent of schools for Elizabeth” in the robocalls, the unrefuted proofs establish that he did not do so. The audio recordings were played by Barry Brendel, and in those recordings Dunn made no mention whatsoever that he was the assistant superintendent of schools. Christin Stella confirmed that the two messages played were the only messages that he sent out via robocalls, neither of which were composed by Dunn. Both messages were prepared by Brendel, who testified that it is critical that only words necessary to convey the message be included. He testified credibly in all respects, indicating that any reference to Dunn’s title would have been “off-message” information, which he would never place into a robocall. Brendel prepared the text of the messages in advance and Dunn recorded the scripts. Dunn had no input or role in writing the messages.

Based upon all of the foregoing facts and the applicable laws, I **CONCLUDE** that neither Dunn, nor Marsal, nor the Board violated any provisions of the School Ethics Act. I **CONCLUDE** that the Commission has failed to meet the burden of proving the charges against respondents by a preponderance of the credible evidence, and I further **CONCLUDE** that the Commission has provided no evidence that Marsal acquired telephone numbers from school records, and no evidence that Jerome Dunn referred to himself as the assistant superintendent of schools in the robocalls sent out during the primary election campaign.

ORDER

It is **ORDERED** that the ethics complaint against Jerome Dunn, Alberto Marsal and the Elizabeth Board of Education be and hereby is **DISMISSED**.

I hereby **FILE** my initial decision with the **SCHOOL ETHICS COMMISSION**. Pursuant to N.J.S.A. 18A:12-29, the School Ethics Commission has jurisdiction to determine whether a violation of the School Ethics Act occurred. If it concludes that the conduct constitutes a violation of the School Ethics Act, it shall recommend an

appropriate penalty to the Commissioner of Education. The Commissioner of Education shall issue the final decision in this matter.

The recommendations of this decision as to whether the conduct constitutes a violation of the School Ethics Act may be adopted, modified or rejected by the **SCHOOL ETHICS COMMISSION**. If the School Ethics Commission does not adopt, modify or reject this decision within forty-five days and unless such time limit is otherwise extended, this recommended decision shall become a final decision.

If the School Ethics Commission determines that a violation has occurred, it shall issue a written decision recommending to the Commissioner of Education an appropriate penalty and shall forward the record, including this recommended decision and its decision, to the Commissioner of Education. The Commissioner of Education may subsequently render a final decision as to the appropriate penalty. If the Commissioner of Education does not render a final decision within forty-five days of its receipt of this initial decision, and unless such time period is otherwise extended, the recommended decision of the School Ethics Commission shall become the final decision.

Within thirteen days from the date on which this recommended decision was mailed to the parties, any party may file written exceptions with the **SCHOOL ETHICS COMMISSION, DEPARTMENT OF EDUCATION, PO Box 500, Trenton, NJ 08625-0500**, marked "Attention: Exceptions." A copy of any exceptions must be sent to the judge and to the other parties.

August 8, 2013
DATE


LESLIE Z. CELENTANO, ALJ

Date Received at Agency:

August 8, 2013

Date Mailed to Parties:

August 8, 2013

dr

APPENDIX

Witnesses

For Petitioner:

Michelle Cetta
Rosemary Reilly
Susan Albertson Mettlen

For Respondents:

Joseph Goldfarb
Donald Sheehy
Harriet Bartley
Valerie A. Dunn
Bruce Elflein
Alberto Marsal
Jerome Dunn
Barry Brendel
Christin Stella via conference call
Melanie Padilla via certification
Donald Goncalves via certification

Exhibits

Joint:

J-1 Complaint
J-2 Answer
J-3 Probable Cause Notice
J-4 Job Description for Dunn
J-5 Job Description for Marsal
J-6 CD recordings of two calls

- J-7 Family Contact Access List
- J-8 Dunn Admissions
- J-9 Marsal Admissions

For Petitioner:

- P-4 User Login Report
- P-5 Voter Registration Form/Party Affiliation 12/11
- P-10 Letter from Union County to Rosemary Kearns (Reilly)
- P-11 E-mail from Alberto Marsal to Mettlen
- P-12 E-mail from Marsal to everyone
- P-13 Emails between Mettlen and Marsal
- P-14 Logon Queues, Marsal
- P-15 Elizabeth Internet Usage Policy
- P-18 Elizabeth Job Performance Review

For Respondent:

- R-4 Dunn Certification 8/8/11
- R-5 Marsal Certification 8/9/11
- R-6 Marsal Certification 9/19/11
- R-9 Goldfarb Certification 9/16/11
- R-10 Stella Certification 8/12/11
- R-11 Stella Certification 9/16/11
- R-14 Computer List Robocall Recipients
- R-15 Specific Reference to Cetta on list
- R-17 Union County Voter Registration Form Michelle Cetta
- R-18 Photo of Michelle Cetta's home
- R-22 Voter Contact information provided by Labels and Lists re Michelle Cetta
- R-24 New Jersey ELEC Contributor Report
- R-28 Marsal Power School Report Queue 4/18/11
- R-29 Marsal Report Queue Job Detail 4/18/11
- R-30 Marsal Class Roster Report 4/18/11
- R-31 Transfer Information, Michelle Cetta's child

- R-32 PowerSchool Security Setting
- R-33 Marsal Login List 7/2/11, 7/22/11, 8/9/11
- R-34 Marsal Display Record Login 7/22/11
- R-35 IP Address Lookup on 68.36.182.142
- R-36 Partial List of PowerSchool Logins on 7/22/11; Detail of 7/22/11 Logins by Marsal and Mettlen
- R-37 Mettlen Display Record Login 7/22/11
- R-38 Power School Logins from IP Address 68.36.182.142 from 12/14/09 to 7/22/11
- R-40 Copy of School Commission Exhibit DOE 216 with date 7/22/11 visible
- R-41 Certification of Melanie Padilla February 2013
- R-42 Registration Form for Michelle Cetta's child dated 3/24/11 and letter from Registration Document Custodian Olga Hugelmeyer
- R-43 Respondent's Interrogatory Number 13; School Ethics Commission's Response to Interrogatory Number 13
- R-44 Certification of Donald Goncalves March 2013