IN THE

UNIVERSITY ELECTIONS COMMISSION

No. UEC-2016-W-007
No. UEC-2016-W-014

JACOB PEARLMAN, in his official capacity as Student General Counsel, Complainant

v.

GRACE BYDALEK, and

CAROLINE PETERSEN, Respondents

[March 11, 2016]

Appearances: JACOB PEARLMAN and NICK LOUKIDES appeared before the Commission on behalf of the Complainant. SARAH BRENNER appeared on behalf of the Respondents.

Heard Before: REESE, Election Director, PODRYGULA, Backup Election Director, ANDREWS, BENNETT, BROWN, CELENTINO, COLELLA, REAVES and ROSENTHAL Commissioners

Opinion of the Commission

COMMISSIONERS BROWN and BENNETT deliver the opinion of the Commission, which ELECTION DIRECTOR REESE (ex officio), Backup Election Director PODRYGULA, and COMMISSIONERS ANDREWS, COLELLA, REAVES, and ROSENTHAL join.
This matter comes before the University Elections Commission on the complaint of Complainant, Jacob Pearlman, against Respondents, Grace Bydalek and Caroline Petersen for violations of Article VI of the CSG Compiled Code (“the Election Code”). Complainant alleges that Respondent failed to attend the Mandatory Candidates’ Meeting held on Monday, March 7th, in violation of § B(7)(e)(iv) of the Election Code.

The complaint was filed with the Election Director on March 7, 2016. Respondents were advised of the complaint on the same day and given twenty-four hours’ time to file a response. Through their appointed counsels, Respondents filed a response and appeared before the Commission at a hearing on March 9, 2016.

Respondent Bydalek is a candidate for SMTD representative. Bydalek was unable to attend the March 7, 2016 Candidates’ Meeting in person because she had a mandatory dress rehearsal for an upcoming University theatrical production. Exhibit D. Respondent Petersen is a candidate for Architecture representative. Petersen was unable to attend the March 7, 2016 Candidates’ Meeting in person because she was participating in a University club ski team tournament. Exhibit E.

Pursuant to Rule 5.04 of the UEC Rules of Practice and Procedure, the Commission FINDS that the “facts, evidence, and arguments” in these matters are “substantially similar in nature,” and ORDERS them consolidated for joint disposition.
I.

The facts in this case are not contested. Accordingly, we FIND the following facts proved beyond a reasonable doubt:

1. A Mandatory Candidates’ Meeting within the meaning of the Election Code was held on March 7, 2016.

2. Notice of said meeting was circulated via email at least one week prior to the meeting. All applications for candidacy distributed to potential candidates listed the date, time and place of the meeting. Those materials also indicated that sanctions could be imposed upon any candidate for failing to appear.

3. A sign-in sheet was positioned at the entrance to the meeting, and attendees were warned multiple times that failure to sign in would likely result in the filing of a complaint against them. Respondents’ names do not appear on the sign-in sheet.

4. Respondents did not physically attend the Mandatory Candidates’ Meeting.

5. Respondents filed an application for candidacy and will appear on the ballot in the upcoming election.
6. Respondent Bydalek was present from the hours of 7:00 PM until 11:45 PM at a dress rehearsal on March 7, 2016.

7. Respondent Petersen was listed to compete in a ski event on March 7, 2016, in Lake Placid, New York.

8. During this election cycle, Respondents have not previously been found in violation of § B(7)(e)(iv) of the Election Code.

II.

Under the Election Code, a candidate is in violation of the code if he/she does not attend the Mandatory Candidates’ Meeting. CSG Compiled Code Art. V(B)(7)(e)(iv). Neither Caroline Petersen nor Grace Bydalek were physically present at the Mandatory Candidates’ Meeting and therefore are in violation of the Code. However, it is within the Commission’s discretion to determine the appropriate penalty, including an assessment of demerits or a warning. Id. Art. V(B)(8)(c). Exercising our discretion today, we decide to issue a warning to Respondents and provide the required written explanation. Id. Art. V(B)(8)(c)(iii).

Both Respondents’ absences share certain characteristics. Drawing on previous decisions, which are not binding but offer persuasive authority, Rule 5.06, UEC Rules of Practice & Procedure, we have held that missing a candidates’ meeting due to certain University-
sponsored extracurricular activities is a violation of the code, but does not warrant issuing demerits. In *Lin v. Campbell et al.*, we found that academic activities, work, and other specialized circumstances were reasonable exceptions to demerits and only warranted a warning. UEC-W-15-001, 2 (March 17, 2015). Specifically, when a candidate was committed to teach a class to prisoners, upon which parole was dependent, the fact of others’ dependency on the candidate was sufficient to mitigate. *Id.* Both Respondents made similar commitments and fulfilled such a role in their respective commitments and are thus a part of specialized extracurricular activities. Bydalek is the lead in a University play; without her presence, the rehearsal (and, therefore, possibly the show) could literally not go on. Petersen is a member of the University’s club ski team; without her participation, her teammates and the University would suffer poorer performance.

In the present case, Respondents also both were absent due to University-sanctioned events. This is similar to the way an attendance-mandatory class is a University-driven event that does not warrant demerits. Unlike a study abroad program, however, which is likewise University-sanctioned, the specialized extracurricular events also are in direct conflict with the Mandatory Candidates’ Meeting. Unlike a study abroad program, which is a general length of time, these University-sanctioned events in these circumstances took place discretely during the same time as the Mandatory
Candidates’ Meeting. Respondent Bydalek’s dress rehearsal took place from 7:00 PM until 11:45 PM on March 7, 2016, Exhibit D (showing Bydalek’s performance time), and Petersen was listed for competition on March 7, 2016, Exhibit E (showing Peteron’s competition list). Respondents Bydalek and Petersen were at University-sanctioned events that were in direct conflict with the Mandatory Candidates’ Meeting.

Moreover, the absences are not only the result of specialized extracurriculars, University sponsorship, and direct conflicts, each absence also rests on unique aspects; namely that Respondent Bydalek’s absence was due to a quasi-academic extracurricular and Respondent Petersen’s was due to a club athletic event, which warrant further explanation.

Participating in a theatrical performance is considered by University of Michigan School of Music, Theatre and Dance (SMTD) students to be a well-known, but unwritten, degree requirement from the school of SMTD. Grace Bydalek Testimony, UEC Hearing, March 9 2016. The Commission does not wish to unduly penalize students for missing the Mandatory Candidates’ Meeting when it is the result of not only a specialized extracurricular, but a quasi-academic activity.

Respondent Petersen’s club ski team event is beyond a specialized extracurricular activity. As a Big Ten School, the University of Michigan has a great stake in athletics at all levels. Indeed, part of the value of the academic
institution of the University of Michigan comes from the fact that it is well-respected in athletics, as well as research and academics, and has a reputation for excellence in athletics against other universities. Furthermore, the University attracts students based on its athletic offerings, including club sports. Petersen’s participation on a club team representing the University, given the aforementioned qualities, supra Part II, mitigates her absence. This Commission does not wish to issue demerits because of the value of the athletic activity to the University and the benefits that flow from that public value. Additionally, we would not want to deter student athletes from participating in Central Student Government.

Respondents are therefore WARNED that the conduct addressed in this Opinion did violate the Election Code and that further violations may result in the assessment of demerits. Accordingly, neither demerits nor vote reductions are assessed against Respondents.

***

COMMISSIONER CELENTINO declines to join the opinion of the Commission.