

Before the School Ethics Commission
OAL Docket No.: EEC 01745-18
SEC Docket No.: C73-17
Final Decision

Jill Nitkinas.
Complainant

v.

Robert Barnhardt and Dana Imbasciani,
Wanaque Board of Education, Passaic County,
Respondent

I. Procedural History

This matter arises from a Complaint that was filed on August 25, 2017, by Jill Nitkinas (Complainant), alleging that Robert Barnhardt and Dana Imbasciani (Respondents), members of the Wanaque Board of Education, violated the School Ethics Act (Act), *N.J.S.A. 18A:12-21 et seq.* More specifically, the Complaint alleges that Respondents violated *N.J.S.A. 18A:12-24.1(c)* and *N.J.S.A. 18A:12-24.1(e)* of the Code of Ethics for School Board Members.

On August 31, 2017, the Complaint was served on Respondents, via regular and certified mail, notifying them that charges were filed against them with the School Ethics Commission (Commission), and advising that they had twenty (20) days to respond to the Complaint. On October 10, 2017, and after receiving a brief extension, Respondents filed an Answer to Complaint (Answer), and also alleged that the Complaint was frivolous.

The parties were notified by correspondence dated November 20, 2017, that this matter would be placed on the Commission's agenda for its meeting on November 28, 2017. At its meeting on November 28, 2017, and as memorialized in a letter decision dated December 1, 2017, the Commission considered the parties' filings, and voted to transmit the matter to the Office of Administrative Law (OAL) for a plenary hearing on the allegations set forth in the Complaint. Although the Commission considered Respondents' request that the Commission find the Complaint frivolous in accordance with the standard set forth in *N.J.A.C. 6A:28-1.2*, and to impose sanctions pursuant to *N.J.S.A. 18A:12-29(e)*, it ultimately voted to reserve its determination on Respondents' allegation. Instead, the Commission indicated it would further review Respondents' request when an Initial Decision was returned from the OAL.

After the matter was transmitted to the OAL, the parties agreed to amicably resolve the matter, and submitted an executed "Settlement Agreement and Withdrawal of Hearing Request." Jude-Anthony Tiscornia, Administrative Law Judge (ALJ), reviewed submission and found that (1) the parties have voluntarily agreed to the settlement as evidenced by their signatures and/or the

signatures of their representatives, and (2) the settlement fully disposes of all issues in controversy and is consistent with law. ALJ Tiscornia concluded that the agreement met the requirements of *N.J.A.C.* 1:1-19.1, and should be approved. ALJ Tiscornia further ordered that the parties comply with the settlement terms, and that the proceedings be concluded.

The Initial Decision was filed with the Commission on October 30, 2018; therefore, the forty-five (45) day statutory period for the Commission to issue its Final Decision was December 14, 2018. Prior to December 14, 2018, the Commission requested a forty-five (45) day extension of time to issue its decision so as to allow the Commission, which only meets monthly, the opportunity to receive and review the full record, including the parties' executed "Settlement Agreement and Withdrawal of Hearing Request." Pursuant to *N.J.S.A.* 52:14B-10(c) and *N.J.A.C.* 1:1-18.8, and for good cause shown, the Commission was granted an extension until January 28, 2019.

At its meeting on November 27, 2018, the Commission considered ALJ Tiscornia's Initial Decision and, at its meeting on December 18, 2018, the Commission voted to adopt ALJ Tiscornia's Initial Decision as its Final Decision, including the parties' settlement agreement, but not to take a position on the enforceability of the terms and conditions of the parties' agreement.

II. Analysis

In their "Settlement Agreement and Withdrawal of Hearing Request," the parties set forth the terms of their settlement. More specifically, although Respondents maintained that the events did not happen as alleged in the Complaint and that, even if proven, would not constitute a violation(s) of the Act, Complainant maintained that she filed her Complaint in good faith. Nonetheless, and in exchange for Complainant's agreement to withdraw her Complaint, Respondents agreed that they would withdraw their request to have the Complaint declared frivolous.

III. Decision

Upon review, and for the reasons set forth above, the Commission adopts ALJ Tiscornia's Initial Decision as its Final Decision, including the parties' fully executed "Settlement Agreement and Withdrawal of Hearing Request," but does not take a position on the enforceability of the terms and conditions of the parties' Agreement. Consequently, this matter is hereby dismissed.

Robert W. Bender
Chairperson

Mailing Date: December 19, 2018

**Resolution Adopting Decision
In Connection With C73-17**

Whereas, at its meeting on November 28, 2017, the School Ethics Commission (Commission) voted to transmit C73-17 to the Office of Administrative Law (OAL) for a plenary hearing on the allegations set forth in the Complaint; and

Whereas, while at the OAL, the parties submitted an executed “Settlement Agreement and Withdrawal of Hearing Request”; and

Whereas, Jude-Anthony Tiscornia, Administrative Law Judge (ALJ), reviewed the parties’ executed “Settlement Agreement and Withdrawal of Hearing Request,” and found that (1) the parties have voluntarily agreed to the settlement as evidenced by their signatures and/or the signatures of their representatives, and (2) the settlement fully disposes of all issues in controversy and is consistent with law; and

Whereas, ALJ Tiscornia concluded that the agreement met the requirements of *N.J.A.C.* 1:1-19.1, and should be approved; and

Whereas, at its meeting on November 27, 2018, the Commission considered ALJ Tiscornia’s Initial Decision; and

Whereas, at its meeting on December 18, 2018, the Commission voted to adopt ALJ Tiscornia’s Initial Decision as its Final Decision, including the parties’ executed “Settlement Agreement and Withdrawal of Hearing Request,” but not to take a position on the enforceability of the terms and conditions of the parties’ agreement; and

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

Robert W. Bender, Chairperson

I hereby certify that this Resolution was duly adopted by the School Ethics Commission at its public meeting on December 18, 2018.

Kathryn A. Whalen, Director
School Ethics Commission