

***Before the School Ethics Commission***  
***OAL Docket No.: EEC-04213-22***  
***SEC Docket No.: C57-21***  
***Final Decision***

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**Amy Kayda, Jenny Swistok, Joseph Curcio, Carla Curcio, Rick Nejman, Denise Ballou,  
Scott Ballou, and Jennifer Messina,**  
***Complainants***

v.

**Charles Kucinski,**  
**Nutley Board of Education, Essex County,**  
***Respondent***

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**I. Procedural History**

The above-captioned matter arises from a Complaint that was filed on October 18, 2021, by Amy Kayda, Jenny Swistok, Joseph Curcio, Carla Curcio, Rick Nejman, Denise Ballou, Scott Ballou, and Jennifer Messina (collectively referred to as Complainants), alleging that Charles Kucinski (Respondent), a member of the Nutley Board of Education (Board), violated the School Ethics Act (Act), *N.J.S.A.* 18A:12-21 *et seq.*<sup>1</sup> More specifically, the Complaint avers that Respondent violated *N.J.S.A.* 18A:12-24.1(a) (Count 1), *N.J.S.A.* 18A:12-24.1(b) (Count 2), *N.J.S.A.* 18A:12-24.1(f) (Counts 1-2), and *N.J.S.A.* 18A:12-24.1(g) (Counts 1-3) of the Code of Ethics for School Board Members (Code).

At its meeting on April 26, 2022, and after reviewing Respondent's Motion to Dismiss in Lieu of Answer (Motion to Dismiss) and Complainants' response thereto at its previous meeting (on March 22, 2022), the School Ethics Commission (Commission) adopted a decision granting the Motion to Dismiss as to the alleged violations of *N.J.S.A.* 18A:12-24.1(a) and *N.J.S.A.* 18A:12-24.1(f) in Count 1, and as to Counts 2-3 in their entirety; denying the Motion to Dismiss as to the violation of *N.J.S.A.* 18A:12-24.1(g) in Count 1; directing Respondent to file an Answer to Complaint (Answer) as to the remaining allegations; and transmitting the matter to the Office of Administrative Law (OAL) following receipt of Respondent's Answer. On May 17, 2022, Respondent filed an Answer as directed, and the above-captioned matter was transmitted to the OAL as a contested matter.

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<sup>1</sup> By correspondence dated October 20, 2021, Complainants were notified that the Complaint was deficient, and required amendment before the School Ethics Commission (Commission) could accept their filing. On October 30, 2021, Complainants cured all defects and filed an Amended Complaint (Complaint) that was deemed compliant with the requirements detailed in *N.J.A.C.* 6A:28-6.3.

At the OAL, the matter was assigned to the Honorable Thomas R. Betancourt, Administrative Law Judge (ALJ Betancourt). *Initial Decision* at 1. ALJ Betancourt held a pre-hearing conference on July 8, 2022, and a pre-hearing Order was issued on the same date. *Id.* at 2. A contested case hearing was scheduled for October 24, 2022, but prior thereto, the parties submitted a Joint Stipulation of Facts and Exhibits, and requested the opportunity to provide closing arguments on the date of the scheduled hearing. *Id.* On October 24, 2022, each party stated, on the record, that they rested their respective cases on the Joint Stipulation of Facts and Exhibits, and provided their closing arguments; thereafter, the record closed. *Id.*

On October 24, 2022, ALJ Betancourt issued an *Initial Decision* detailing his findings of fact and legal conclusions.<sup>2</sup> The Commission acknowledged receipt of ALJ Betancourt's *Initial Decision* on the date it was issued (October 24, 2022); therefore, the forty-five (45) day statutory period for the Commission to issue a Final Decision was December 8, 2022. Prior to December 8, 2022, 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' Exceptions (if any). 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 23, 2023.<sup>3</sup>

Following a discussion at its meeting on November 22, 2022, during which the full record was reviewed, the Commission voted, at its meeting on December 20, 2022, to adopt the findings of fact from ALJ Betancourt's *Initial Decision*; to adopt the legal conclusion that, based on the evidence presented, Complainants failed to prove that Respondent violated *N.J.S.A. 18A:12-24.1(g)*; and to adopt ALJ Betancourt's decision to dismiss the above-captioned matter.

## II. Initial Decision

In his *Initial Decision*, ALJ Betancourt summarized the remaining issue in dispute as follows: Do the facts, as stipulated between the parties, constitute a violation of *N.J.S.A. 18A:12-24.1(g)*, or more specifically, did the Respondent's providing of a copy of the proposed letter to Governor Murphy to Janice Fraser (Ms. Fraser), a member of the parent committee, constitute a disclosure of a confidential matter pertaining to the schools which, if disclosed, would needlessly injure individuals or the schools? *Id.* at 3.

After summarizing the remaining issue in dispute, ALJ Betancourt detailed the facts stipulated to by the parties, namely:

1. The instant matter arose over the issue of whether the Board should write a letter to the Governor to relax the pandemic mask mandate for public schools.
2. At the time of the instant controversy, Respondent was the Board President.

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<sup>2</sup> On October 26, 2022, ALJ Betancourt issued an amended decision "to correct the Stipulation of Facts found page 4, number 7."

<sup>3</sup> Forty-five (45) days after December 8, 2022, is, technically, Sunday, January 22, 2023; by rule, the deadline is therefore extended until the next business day, which is Monday, January 23, 2023.

3. At the Board meeting on August 23, 2021, parents who were opposed to Governor Murphy's mask mandate requested the Board write a letter to the Governor requesting relaxation of the mask mandate. The named Complainants in this matter are all parents who opposed the mask mandate and wanted it to be the parents' choice.

4. After some debate, a motion was made and seconded for the Board to write a "strong letter" to the Governor indicating that the Nutley School District (District) stands behind the other school districts against the mask mandate and that letter should have input from legal counsel.

5. After the passage of the Resolution and further discussion, some Board members who had voted for same, expressed concern about what the letter to the Governor should say. As a result of this concern, it was decided an Ad Hoc Committee comprised of Board members and parents both for and against the mask mandate would be formed to review any letter to be written to the Governor and the letter would have input from Board counsel.

6. Respondent reached out to parents on both sides of the issue for them to be part of the Ad Hoc Committee. Ms. Fraser was a parent in favor of the mask mandate and agreed to be a member of the parent committee, but indicated she would not attend any meeting because of her COVID-19 concerns.

7. Respondent, along with Board members Daniel Carnicella and Salvatore Ferraro, prepared a draft letter to be sent, and it was then shared with the members of the parent committee for their input and comments.

8. Because Ms. Fraser had indicated she would not attend the committee meeting in person, Respondent provided her with a copy of the draft letter, which had been put together by the named Board members on September 7, 2021 (which was prior to the parent committee meeting).

9. At the parent committee meeting on September 14, 2021, a copy of the proposed letter was provided to all members for their comments and input. They were not allowed to take a copy out of the meeting, but were invited to comment on the letter via email.

10. The draft letter was put together by Respondent and Board members Carnicella and Ferraro with input from the Board attorney, prior to the meeting with the parent committee. None of the comments offered by any member of the parent committee, including Ms. Fraser, were ever incorporated in the letter.

11. At the Board meeting on September 20, 2021, the Board decided not to send a letter to Governor Murphy concerning the mask mandate. As such, a resolution to rescind the Resolution of August 23, 2021, was passed by a vote of 5-1.

*Id.* at 3-4.

After considering the parties' Joint Stipulation of Facts and Exhibits, ALJ Betancourt determined that Complainants "have failed to shoulder their burden in the instant matter." *Id.* at 5. ALJ Betancourt notes that the draft letter was discussed "in an open public meeting" on August 23, 2021, and, following this discussion, the Board adopted a Resolution to send the Governor a letter regarding the mask mandate. *Id.* Thereafter, an ad hoc committee was formed to review any letter to be sent to the Governor. *Id.* Respondent then sent Ms. Fraser, a member of the committee, a copy of the draft letter because she would not attend the meeting as scheduled (due to COVID-19 concerns). *Id.* Importantly, ALJ Betancourt determined that, "[n]othing contained in the Stipulated Facts remotely establishes that the letter was confidential." *Id.* Even if it was confidential, it was only provided to a member of the ad hoc committee, and not to the public at large. *Id.*

ALJ Betancourt further notes the draft letter was next discussed at the ad hoc committee meeting on September 14, 2021, and "[n]othing about this event leads one to believe the letter was a confidential matter." *Id.* Moreover, and again assuming that the letter was confidential, which it was not, its disclosure "could not reasonably be found to needlessly injure individuals or the schools. *Id.* at 6.

Therefore, and for the foregoing reasons, ALJ Betancourt **concluded** that the Complaint should be dismissed.

### **III. Exceptions**

The *Initial Decision* was sent to the parties on October 24, 2022, and stated, in relevant part, "Within thirteen days from the date on which this recommended decision was mailed to the parties, any party may file written exceptions with the" Commission. As of November 7, 2022, which was thirteen (13) days after the *Initial Decision* was mailed to the parties, neither party has filed exceptions and/or requested an extension to do so.

### **IV. Analysis**

Following receipt of an Initial Decision, the Commission "may enter an order or a final decision adopting, rejecting, or modifying" it. *N.J.A.C.* 1:1-18.6(a). The Commission is also authorized to "reject or modify conclusions of law, interpretations of agency policy, or findings of fact not relating to issues of credibility of lay witness testimony," but "may not reject or modify any finding of fact as to issues of credibility of lay witness testimony unless it first determines from a review of a record that the findings are arbitrary, capricious or unreasonable, or are not supported by sufficient, competent, and credible evidence in the record." *N.J.A.C.* 1:1-18.6(b); *N.J.A.C.* 1:1-18.6 (c).

With the above in mind, and following a thorough, careful, and independent review of the record, the Commission finds an insufficient basis upon which to modify or to otherwise reject the findings of fact detailed in ALJ Betancourt's *Initial Decision*. Furthermore, in the absence of sufficient credible evidence that Respondent took action to make public, reveal or disclose information that was not public under any laws, regulations or court orders of this State, or information that was otherwise confidential in accordance with board policies, procedures or

practices, or took action to provide inaccurate information (and the provision of such information was other than reasonable mistake or personal opinion or was not attributable to developing circumstances), the record supports ALJ Betancourt's legal conclusion that Respondent did not violate *N.J.S.A.* 18A:12-24.1(g).

## V. Decision

Following its review, the Commission ***adopts*** the findings of fact from ALJ Betancourt's *Initial Decision*; ***adopts*** the legal conclusion that Respondent did not violate *N.J.S.A.* 18A:12-24.1(g); and ***adopts*** the decision to dismiss the above-captioned matter.

Accordingly, this is a final agency decision and is appealable only to the Superior Court-Appellate Division. *See, N.J.A.C.* 6A:28-10.11 and *New Jersey Court Rule* 2:2-3(a).

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Robert W. Bender, Chairperson

Mailing Date: December 20, 2022

***Resolution Adopting Decision  
in Connection with C57-21***

***Whereas***, on or about May 17, 2022, the School Ethics Commission (Commission) transmitted the above-captioned matter to the Office of Administrative Law (OAL) as a contested matter; and

***Whereas***, the Honorable Thomas R. Betancourt, Administrative Law Judge (ALJ Betancourt) issued an *Initial Decision* dated October 24, 2022; and

***Whereas***, in his *Initial Decision*, ALJ Betancourt issued findings of fact and found that Respondent did not violate *N.J.S.A.* 18A:12-24.1(g) as alleged; and

***Whereas***, neither party filed exceptions to ALJ Betancourt's *Initial Decision*; and

***Whereas***, at its meeting on November 22, 2022, the Commission reviewed and discussed the full record; and

***Whereas***, at its meeting on November 22, 2022, the Commission discussed adopting the findings of fact from ALJ Betancourt's *Initial Decision*; adopting the legal conclusion that, based on the evidence presented, Complainants failed to prove that Respondent violated *N.J.S.A.* 18A:12-24.1(g); and adopting ALJ Betancourt's decision to dismiss the above-captioned matter; and

***Whereas***, at its meeting on December 20, 2022, the Commission reviewed and voted to approve the within decision as accurately memorializing its actions/findings from its meeting on November 22, 2022; and

***Now Therefore Be It Resolved***, the Commission hereby adopts the within decision.

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Robert W. Bender, Chairperson

I hereby certify that this Resolution was duly adopted by the School Ethics Commission at its regularly scheduled meeting on December 20, 2022.

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Kathryn A. Whalen, Esq.  
Director, School Ethics Commission