
EDWARD CHMIELEWSKI

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**BEFORE THE SCHOOL
ETHICS COMMISSION**

v.

**DAMIANO FRACASSO
HACKETTSTOWN BOARD OF EDUCATION
WARREN COUNTY**

**SEC Docket No. C26-11
OAL Dkt. No. 10796-11
DECISION ON SETTLEMENT**

PROCEDURAL HISTORY

This matter arises from a complaint filed on June 6, 2011, by complainant, Edward Chmielewski, alleging that respondent, Damiano Fracasso, a member of the Hackettstown Board of Education violated the School Ethics Act ("Act"), N.J.S.A. 18A:12-21 *et seq.* By letter dated June 6, 2011, the School Ethics Commission (Commission) acknowledged receipt of the complaint and deemed it procedurally deficient. The complainant filed an amended complaint on June 13, 2011, resolving the procedural deficits, and specifically alleged that the respondent violated N.J.S.A. 18A:12-24.1(b), (c), (d), (e), and (f) of the Code of Ethics for School Board Members (Code).

On July 1, 2011, the respondent requested additional time to submit an answer and was granted until August 1, 2011 to file. The respondent answered the complaint on August 1, 2011, alleging that the complaint was frivolous. The complainant did not reply.

The parties were notified by letter dated August 2, 2011 that the Commission would consider this matter at its meeting on August 23, 2011 in accordance with N.J.A.C. 6A:28-10.8. Therein, the parties were specifically advised that the Commission would take one of several actions: Decide to retain the complaint for a hearing by the Commission at a later date; decide to refer the matter to the Office of Administrative Law for a hearing; table the matter to request additional information or legal advice; or dismiss the complaint where the allegations in the complaint, on their face, were insufficient, even if true, to warrant review by the Commission as possible violations of the Act.

At its meeting on August 23, 2011, The Commission voted to find that the above-captioned complaint was not frivolous, in accordance with the standard set forth at N.J.A.C. 6A:28-1.2; and, pursuant to N.J.A.C. 6A:28-10.8(a), the Commission voted to transmit this complaint to the Office of Administrative Law (OAL) for a hearing where the complainant would carry the burden to prove factually a violation under the Code of Ethics for School Board Members in accordance with standards set forth at N.J.A.C. 6A:28-6.4.

After transmittal of this matter to the OAL, the parties submitted a an Agreement and Mutual Release with the intent to settle and resolve all issues. The Administrative Law Judge

(ALJ) concluded that the Agreement meets the requirements of N.J.A.C. 1:1-19.1 and the matter was returned to the Commission for review. 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 of time in which to issue its final decision in this matter.

The Initial Decision of the ALJ approving the Consent Order was reviewed by the Commission at its February 19, 2013 meeting. The Commission determined to accept the proposed settlement.

ANALYSIS

The parties to the Agreement and fully set out the terms of the settlement and consider it a complete release of all claims arising out of the facts of this controversy and further agree that neither party will commence a law suit against one another from any claims averred in this matter. Finally, the complainant agreed to withdraw with prejudice his complainant docketed as C26-11 before the School Ethics Commission.

DECISION

Upon review and for the reasons set forth above, the Commission adopts the Initial Decision of the ALJ accepting the Agreement and Mutual Release, signed by the parties in this matter. Moreover, the Commission approves the parties' settlement and adopts the Initial Decision as the final decision in this matter. The matter is hereby dismissed, subject to compliance with the terms of the settlement.

Robert W. Bender
Chairperson

Mailing Date: March 23, 2013

Resolution Adopting Decision – C26-11

Whereas, pursuant to N.J.A.C. 6A:28-10.8(a), the Commission voted to transmit this matter to the Office of Administrative Law (OAL) for hearing; and

Whereas, while at the OAL, the parties to this matter executed an Agreement and Mutual Release setting for the terms and conditions of a settlement; and

Whereas, the Administrative Law Judge concluded that the Agreement met the requirements of N.J.A.C. 1:1-19.1; and

Whereas, at its meeting on February 19, 2013, the Commission determined to accept the proposed settlement; and

Whereas, the Commission finds that the within decision accurately memorializes its adoption of the Initial Decision accepting the Agreement;

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

Robert W. Bender, Chairperson

I hereby certify that this Resolution was duly adopted by the School Ethics Commission at it public meeting on March 22, 2013.

Joanne M. Restivo
Interim Executive Director
School Ethics Commission