

Before the School Ethics Commission
OAL Docket No.: EEC-13039-18
SEC Docket No.: C15-18
Final Decision

**Benjie Wimberly,
Complainant**

v.

**Jonathan Hodges,
Paterson City Board of Education, Passaic County,
Respondent**

I. Procedural History

This matter arises from a Complaint that was filed on February 22, 2018, by Benjie Wimberly (Complainant), alleging that Jonathan Hodges (Respondent), a member of the Paterson City Board of Education (Board), violated the School Ethics Act (Act), *N.J.S.A.* 18A:12-21 *et seq.* More specifically, the Complaint alleged that Respondent violated *N.J.S.A.* 18A:12-24.1(c), *N.J.S.A.* 18A:12-24.1(d), *N.J.S.A.* 18A:12-24.1(e), and *N.J.S.A.* 18A:12-24.1(g) of the Code of Ethics for School Board Members (Code).

On February 27, 2018, the Complaint was served on Respondent, via regular and certified mail, notifying him that charges were filed against him with the School Ethics Commission (Commission), and advising that he had twenty (20) days to file a responsive pleading. When Respondent failed to respond to the Complaint, he was notified, by correspondence dated March 27, 2019, that failure to file an Answer to Complaint (Answer) or Motion to Dismiss in Lieu of Answer (Motion to Dismiss) would result in the allegations being admitted, and the Commission deciding the matter on a summary basis. On May 1, 2018, Respondent filed a Motion to Dismiss, and Complainant filed his response to the Motion to Dismiss immediately thereafter.

By correspondence dated May 14, 2018, the parties were notified that this matter would be placed on the Commission's agenda for its meeting on May 22, 2018, in order to make a determination regarding the Motion to Dismiss. At its meeting on May 22, 2018, the Commission considered the filings in this matter and, at its meeting on June 25, 2018, the Commission voted to grant the Motion to Dismiss in part (as to the alleged violations of *N.J.S.A.* 18A:12:24.1(c) and *N.J.S.A.* 18A:12-24.1(d)); deny the Motion to Dismiss as to the other allegations in the Complaint (*N.J.S.A.* 18A:12:24.1(e) and *N.J.S.A.* 18A:12:24.1(g)); direct the filing of an Answer as to the remaining allegations (*N.J.S.A.* 18A:12:24.1(e) and *N.J.S.A.* 18A:12:24.1(g)); and to transmit the matter to the Office of Administrative Law (OAL) following receipt of the Answer.

The above-captioned matter was transmitted to the OAL on or about September 5, 2018. At the time of transmittal, and even though the Commission sent reminders to Respondent on July 24, 2018, and August 17, 2018, he had not yet filed an Answer.

After the matter was transmitted to the OAL, the parties agreed to amicably resolve the matter, and submitted an executed “Settlement Agreement and Mutual Release” to Ernest M. Bongiovanni, Administrative Law Judge (ALJ). ALJ Bongiovanni reviewed the submission and found that (1) the parties 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 Bongiovanni concluded that the agreement met the requirements of *N.J.A.C. 1:1-19.1*, and should be approved. ALJ Bongiovanni 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 April 3, 2019; therefore, the forty-five (45) day statutory period for the Commission to issue its Final Decision was May 20, 2019. Prior to May 20, 2019, 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 Mutual Release.” 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 July 5, 2019.

At a special meeting on May 2, 2019, the Commission considered ALJ Bongiovanni’s Initial Decision and, at its meeting on May 21, 2019, the Commission voted to adopt ALJ Bongiovanni’s Initial Decision as its Final Decision, including the parties’ “Settlement Agreement and Mutual Release,” but not to take a position on the enforceability of the terms and conditions of the parties’ “Settlement Agreement and Mutual Release.”

II. Analysis

In their “Settlement Agreement and Mutual Release,” the parties set forth the terms of their settlement. More specifically, and in exchange for Respondent’s agreement to remove any negative information “derived from this transaction,” Complainant agreed to dismiss the above-captioned matter within thirty (30) days of executing the parties’ “Settlement Agreement and Mutual Release.” Both parties also mutually agreed to discharge the other from all claims, suits, actions, charges, demands, judgments, costs and executions related to this matter, and acknowledged their respective rights and obligations as set forth in the “Settlement Agreement and Mutual Release.”

III. Decision

Upon review, and for the reasons set forth above, the Commission adopts ALJ Bongiovanni’s Initial Decision as its Final Decision, including the parties’ fully executed “Settlement Agreement and Mutual Release,” but does not take a position on the enforceability of the terms and conditions of the parties’ “Settlement Agreement and Mutual Release.” Consequently, this matter is hereby dismissed.

Robert W. Bender
Chairperson

Mailing Date: May 22, 2019

***Resolution Adopting Decision
In Connection With C15-18***

Whereas, at its meeting on May 22, 2018, the School Ethics Commission (Commission) voted to transmit C15-18 to the Office of Administrative Law (OAL) for a plenary hearing following receipt of Respondent’s Answer to Complaint for the remaining allegations set forth in the Complaint; and

Whereas, while at the OAL, the parties submitted an executed “Settlement Agreement and Mutual Release” to Ernest M. Bongiovanni, Administrative Law Judge (ALJ), for review; and

Whereas, ALJ Bongiovanni reviewed the parties’ executed “Settlement Agreement and Mutual Release,” and found that (1) the parties 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 Bongiovanni concluded that the agreement met the requirements of *N.J.A.C.* 1:1-19.1, and should be approved; and

Whereas, at a special meeting on May 2, 2019, the Commission considered ALJ Bongiovanni’s Initial Decision; and

Whereas, at its meeting on May 21, 2019, the Commission voted to adopt ALJ Bongiovanni’s Initial Decision as its Final Decision, including the parties’ executed “Settlement Agreement and Mutual Release,” but does not take a position on the enforceability of the terms and conditions of the parties’ “Settlement Agreement and Mutual Release”; 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 May 21, 2019.

Kathryn A. Whalen, Director
School Ethics Commission