

***Before the School Ethics Commission***  
***OAL Docket No.: EEC-08325-21***  
***SEC Docket No.: C29-21***  
***Final Decision***

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**Gerald Benaquista,**  
***Complainant***

v.

**Ronnie McDowell,**  
**Township of Union Board of Education, Union County,**  
***Respondent***

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**I. Procedural History**

The above-captioned matter arises from a Complaint that was filed on July 25, 2021, by Gerald Benaquista (Complainant) alleging that Ronnie McDowell (Respondent), a member of the Township of Union Board of Education (Board), violated the School Ethics Act (Act), *N.J.S.A.* 18A:12-21 *et seq.* More specifically, the Complaint avers that Respondent violated *N.J.S.A.* 18A:12-24.1(e), *N.J.S.A.* 18A:12-24.1(g), and *N.J.S.A.* 18A:12-24.1(i) of the Code of Ethics for School Board Members (Code).

On July 26, 2021, the Complaint was served on Respondent, via electronic mail, notifying him that charges were filed against him with the School Ethics Commission, and advising that he had twenty (20) days to file a responsive pleading.<sup>1</sup> On September 3, 2021, Respondent filed an Answer to Complaint (Answer).

The parties were notified by correspondence dated September 14, 2021, that the above-captioned matter would be discussed by the Commission at its meeting on September 21, 2021. Following its meeting on September 21, 2021, the Commission advised the parties that it voted to transmit the above-captioned matter to the Office of Administrative Law (OAL) for a plenary hearing. The Commission further advised that, at the OAL, Complainant would have the burden to prove the alleged violations of *N.J.S.A.* 18A:12-24.1(e), *N.J.S.A.* 18A:12-24.1(g), and *N.J.S.A.* 18A:12-24.1(i) pursuant to the standards set forth in *N.J.A.C.* 6A:28-6.4.

At the OAL, the matter was assigned to the Honorable Kelly J. Kirk, Administrative Law Judge (ALJ Kirk). After the matter was transmitted to the OAL, the parties agreed to amicably resolve the matter, and submitted an executed Settlement Agreement to ALJ Kirk, whereby Respondent admitted to violations of *N.J.S.A.* 18A:12-24.1(e), *N.J.S.A.* 18A:12-24.1(g), and *N.J.S.A.* 18A:12-24.1(i), and agreed to a penalty of reprimand. On March 28, 2022, ALJ Kirk

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<sup>1</sup> As a result of the ongoing Coronavirus (COVID-19) pandemic, and the implementation of electronic filing, service of process was effectuated by the Commission through electronic transmission only.

issued an *Initial Decision* which approved the parties' settlement, and concluded the proceedings.<sup>2</sup>

The Commission acknowledged receipt of ALJ Kirk's *Initial Decision* on March 28, 2022; therefore, the forty-five (45) day statutory period for the Commission to issue a Final Decision was May 12, 2022. Prior to that date, 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 review the full record. 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 June 27, 2022.<sup>3</sup>

At a meeting on April 26, 2022, the Commission considered ALJ Kirk's *Initial Decision* and, at its meeting on May 24, 2022, the Commission voted to adopt it as its Final Decision in connection with the above-captioned matter.

### **III. Initial Decision**

At the OAL, the parties agreed to settle all issues in dispute, and executed a Settlement Agreement which reads, in relevant part:

- 1) On May 3, 2021 Respondent ... attended and participated in the Battle Hill Elementary School Parent Teacher Association ("BHPTA") meeting;
- 2) At the BHPTA meeting Respondent was asked if [Complainant] who was the Union Township Acting Superintendent, would be considered if the Board's first choice resulting from the Superintendent search for the Union Superintendent position declined the offer for the position;
- 3) Respondent stated that if the first candidate chosen by the Board for the Superintendent position refused an offer for the position, "it was unlikely Complainant would be considered;"
- 4) Without Board approval as to the Board's process in the above-described circumstance, Respondent's answer was that the fact [Complainant] " ... was not in for a second interview makes it unlikely that he would be reconsidered. From 12 candidates it was brought down to 4. From those 4, they agreed on a final 2[.]" He continued by stating that if the individual offered the position decides that he does not want that contract, "they will go to the second person;"
- 5) On May 18, 2021, the ... Board ... approved a five-year contract for Scott Taylor as the new Superintendent, effective July I, 2021. He was the first candidate to whom the Board offered the position;

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<sup>2</sup> The Settlement Agreement is appended to ALJ Kirk's *Initial Decision*.

<sup>3</sup> Forty-five (45) days after May 12, 2022, is, technically, Sunday, June 26, 2022. By rule, the deadline was extended until the next business day, June 27, 2022.

- 6) Respondent agrees that his above-quoted statements provided confidential Board information to the public that had the potential to compromise the Superintendent Search in violation of *N.J.S.A.* 18A:12-24.1(e);
- 7) At that same meeting on May 3, 2021, Respondent made the following statement regarding the District's search for a new Superintendent "... but the one thing they wanted from the board [SIC] was a person that would hold everyone accountable for moving the district along. It might be difficult for him [referring to Complainant] to hold people's feet to the fire;"
- 8) Respondent agrees that the above-quoted statements inappropriately discussed personnel matters that constituted confidential Board deliberations;
- 9) Respondent agrees that those statements could needlessly have caused injury to Complainant as prohibited under *N.J.S.A.* 18A:12-24.1(e) and (g);
- 10) Respondent agrees that his statement as to the Board seeking a Superintendent who will hold staff members' "feet to the fire" was evaluative of [Respondent's] performance as Acting Superintendent while he held that posit[i]on;
- 11) Respondent agrees that making public evaluative statements of Complainant's performance as Acting Superintendent at the PTA meeting violates *N.J.S.A.* 18A:12-24.1(i);
- 12) The Parties to this matter have amicably agreed to this Settlement Agreement as to all claims set forth in the Complaint. As set forth above they agree that Respondent violated *N.J.S.A.* 18A:12-24.1(g), *N.J.S.A.* 18A:12-24.1(e), and *N.J.S.A.* 18A:12-24.1(i). The Parties further agree that the appropriate discipline for those violations is the single action of issuing an Order of Reprimand against Respondent.

...

*Initial Decision* (attachment).

Based on the foregoing, and following her review, ALJ Kirk issued an *Initial Decision* which incorporated the terms of the parties' Settlement Agreement, and contained the following additional findings:

1. The parties have voluntarily agreed to the settlement as evidenced by the signatures of the parties or their representatives and statements made in the record, and
2. The settlement fully disposes of all issues in controversy and is consistent with law.

*Initial Decision* at 2.

ALJ Kirk further found that the agreement met the requirements of *N.J.A.C.* 1:1-19.1, and should be approved. *Id.* As such, ALJ Kirk “approve[d] the settlement,” and ordered “that these proceedings be concluded.” *Id.*

#### **IV. Decision**

Following a careful and independent review of the full record, including the parties’ duly executed Settlement Agreement, the Commission **adopts** ALJ Kirk’s *Initial Decision* as its Final Decision.

Notwithstanding its decision as set forth herein, the Commission notes that had Respondent, following a full and impartial hearing, been found to have violated multiple provisions of the Code as contended in the Complaint, a more severe form of penalty could have been recommended by the Commission to the Commissioner of Education. Nonetheless, the Commission fully respects that the parties, in an effort to save time and resources, were able to negotiate the terms of a mutually agreeable Settlement Agreement, whereby Respondent voluntarily admitted to his ethical violations, in exchange, for a reprimand. As such, and in these fact-specific circumstances, namely those of settlement, the Commission agrees that adoption of ALJ Kirk’s *Initial Decision* as its Final Decision is appropriate.

Consequently, and for the reasons more fully discussed herein, the above-captioned matter is hereby dismissed.

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Robert W. Bender, Chairperson

Mailing Date: May 24, 2022

***Resolution Adopting Decision  
in Connection with C29-21***

***Whereas***, at its meeting on September 21, 2021, the School Ethics Commission (Commission) voted to transmit the within matter to the Office of Administrative Law (OAL) for a plenary hearing; and

***Whereas***, while at the OAL, the parties submitted a duly executed Settlement Agreement to Kelly J. Kirk, Administrative Law Judge (ALJ Kirk), for review; and

***Whereas***, pursuant to the terms of the parties' Settlement Agreement, Respondent admitted to violations of *N.J.S.A.* 18A:12-24.1(e), *N.J.S.A.* 18A:12-24.1(g), and *N.J.S.A.* 18A:12-24.1(i), and agreed to a penalty of reprimand; and

***Whereas***, ALJ Kirk reviewed the parties duly executed Settlement Agreement, and subsequently issued an *Initial Decision* which found that (1) the parties have voluntarily agreed to the settlement as evidenced by the signatures of the parties or their representatives and statements made in the record, and (2) the settlement fully disposes of all issues in controversy and is consistent with law; and

***Whereas***, at a meeting on April 26, 2022, the Commission considered ALJ Kirk's *Initial Decision*; and

***Whereas***, at its meeting on April 26, 2022, the Commission discussed adopting ALJ Kirk's *Initial Decision* as its Final Decision; and

***Whereas***, at its meeting on May 24, 2022, the Commission reviewed and voted to approve the within decision as accurately memorializing its actions/findings from its meeting on April 26, 2022; 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.

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Robert W. Bender, Chairperson

I hereby certify that this Resolution was duly adopted by the School Ethics Commission at its meeting on May 24, 2022.

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Kathryn A. Whalen, Esquire  
Director, School Ethics Commission