

***Before the School Ethics Commission
OAL Docket No.: EEC-08213-22
SEC Docket No.: C45-22
Final Decision (Settlement)***

**Dr. Trudy Atkins, Eileen Francisco-Cabus, Michael James, Stephen Heberling, Howard Barman, Joseph Dean, Erika Worthy, Katherine Clark, and Janet Nielsen,
Complainants**

v.

**Ryan Cody,
Bordentown Regional Board of Education, Burlington County,
Respondent**

I. Procedural History

The above-captioned matter arises from a Complaint that was filed on April 11, 2022, by Dr. Trudy Atkins, Eileen Francisco-Cabus, Michael James, Stephen Heberling, Howard Barman, Joseph Dean, Erika Worthy, Katherine Clark, and Janet Nielsen (collectively referred to as Complainants), alleging that Ryan Cody (Respondent), a member of the Bordentown Regional 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(b)* (in Count 8, Counts 11-12, and Count 15), *N.J.S.A. 18A:12-24(g)* (in Counts 14-15), as well as *N.J.S.A. 18A:12-24.1(a)* (in Counts 4-5), *N.J.S.A. 18A:12-24.1(b)* (in Count 4 and Count 7), *N.J.S.A. 18A:12-24.1(c)* (in Counts 1-2, Counts 4-12, and Counts 14-15), *N.J.S.A. 18A:12-24.1(d)* (in Count 2, Count 4, Counts 6-12, and Counts 14-15), *N.J.S.A. 18A:12-24.1(e)* (in Counts 1-9 and Counts 11-15), *N.J.S.A. 18A:12-24.1(g)* (in Count 3, Counts 5-6, Count 9, Count 11, and Count 15), *N.J.S.A. 18A:12-24.1(i)* (in Count 2, Count 6, Counts 13-15), and *N.J.S.A. 18A:12-24.1(j)* (in Count 8).

On April 13, 2022, the Complaint was served on Respondent via electronic mail, notifying him that ethics charges had been filed against him with the School Ethics Commission (Commission), and advising that he had twenty (20) days to file a responsive pleading.¹ On June 21, 2022, Respondent filed a Motion to Dismiss in Lieu of Answer (Motion to Dismiss), and also alleged that the Complaint is frivolous. Prior to the filing of a response by Complainants, Respondent submitted a supplement to his Motion to Dismiss and allegation of frivolous filing on June 24, 2022, and a second supplement on June 28, 2022, both of which were accepted by the Commission despite Complainants' objection. On July 11, 2022, Complainants filed a response to the Motion to Dismiss and allegation of frivolous filing.

¹ In order to conduct business during the Coronavirus (COVID-19) pandemic, the Commission implemented an electronic filing system, which remains a permissible method by which the Commission and parties can effectuate service of process. Consequently, service of process was effectuated by the Commission through electronic transmission only.

By correspondence dated July 25, 2022, Complainants voluntarily withdrew the alleged violations of *N.J.S.A.* 18A:12-24(b) (in Count 8, Counts 11-12, and Count 15) and *N.J.S.A.* 18A:12-24(g) (in Counts 14-15) from their Complaint. On July 25, 2022, the Commission sent an acknowledgment letter confirming the withdrawal of these allegations and, therefore, the *dismissal* of those claims from the above-captioned matter.

Thereafter, and at its meeting on August 22, 2022, the Commission adopted a decision granting the Motion to Dismiss as to the alleged violations of *N.J.S.A.* 18A:12-24.1(a) in Counts 4-5; denying the Motion to Dismiss as to all other allegations in the Complaint; finding the Complaint not frivolous, and denying Respondent’s request for sanctions; directing Respondent to file an Answer to Complaint (Answer) to the remaining allegations in the Complaint; and, following receipt of the Answer, transmitting the matter to the Office of Administrative Law (OAL). On September 11, 2022, Respondent filed his Answer, which was a resubmission of his previously filed Motion to Dismiss and allegation on frivolous filing, and the above-captioned matter was transmitted to the OAL on or about September 16, 2022. *Initial Decision* at 1.

At the OAL, the matter was assigned to the Honorable Jeffrey N. Rabin, Administrative Law Judge (ALJ Rabin). *Id.* On or about November 21, 2022, the parties filed a fully executed “Settlement Agreement and General Release.” *Id.* at 2. After reviewing the terms of the parties’ written “Settlement Agreement and General Release,” ALJ Rabin concluded that it met the requirements of *N.J.A.C.* 1:1-19.1, and should be approved. *Id.* Thereafter, and on December 12, 2022, ALJ Rabin issued an *Initial Decision* ordering that the proceedings be concluded. *Id.*

The Commission acknowledged receipt of ALJ Rabin’s *Initial Decision (Settlement)* on December 14, 2022; therefore, the forty-five (45) day statutory period for the Commission to issue its Final Decision was January 30, 2023.² Prior to January 30, 2023, 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. 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 March 16, 2023.

At a special meeting on January 31, 2023, the Commission reviewed ALJ Rabin’s *Initial Decision (Settlement)* and, at its regularly scheduled meeting on February 21, 2023, the Commission voted to adopt ALJ Rabin’s *Initial Decision (Settlement)* as its Final Decision. However, the Commission also voted not to take a position on the enforceability of the parties’ written “Settlement Agreement and General Release.”

II. Analysis

In their fully executed “Settlement Agreement and General Release,” the parties set forth the terms of their settlement. *Initial Decision* at 2. More specifically, the parties agreed, in relevant part, that Respondent engaged in conduct violative of multiple provisions of the Code of Ethics for School Board Members (Code); Respondent would take certain corrective action on

² Forty-five (45) days after December 14, 2022, is, technically, Saturday, January 28, 2023; by rule, and because January 28, 2023, is a Saturday, the deadline is extended until the next business day, which is Monday, January 30, 2023.

his social media account(s); and, in exchange for Respondent’s agreement to voluntarily tender his irrevocable letter of resignation from the Board, Complainants would not pursue attorney’s fees and costs against him and/or further litigate the claims set forth in their Complaint, in which they sought Respondent’s removal.

After reviewing the terms of the parties’ written “Settlement Agreement and General Release,” ALJ Rabin found that:

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

Id. at 2. Having concluded that the parties’ “Settlement Agreement and General Release” met the requirements of *N.J.A.C.* 1:1-19.1 and should be approved, ALJ Rabin ordered that the parties comply with the terms of their “Settlement Agreement and General Release,” and that the proceedings be concluded. *Id.*

III. Decision

Following its review, and because the Commission finds that there is no reason why it should not defer to the parties’ mutual decision to amicably resolve their dispute to avoid the time and expense associated with protracted litigation, the Commission adopts ALJ Rabin’s *Initial Decision (Settlement)* as its Final Decision, but does not take a position on the enforceability of the parties’ written “Settlement Agreement and General Release.” Although the Commission adopts ALJ Rabin’s *Initial Decision (Settlement)* as its Final Decision, and acknowledges that Respondent voluntarily resigned from his position on the Board, it feels compelled to reiterate that Board members may not deliberately disregard and ignore the ethical standards that they are required, by law, to uphold and enforce. When Board members do so, it not only threatens the integrity of the Board, it also unnecessarily compromises District personnel and subverts the very purpose for which Board members are elected – namely, to serve the needs of the school district and its students. Failure to abide by these ethical standards can, and will be, met with an appropriate penalty.

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

Robert W. Bender, Chairperson

Mailing Date: January 31, 2023

***Resolution Adopting Final Decision (Settlement)
in Connection with C45-22***

Whereas, at its meeting on August 22, 2022, the School Ethics Commission (Commission) voted to transmit the above-captioned matter to the Office of Administrative Law (OAL) following receipt of Respondent’s Answer to Complaint (Answer), which was received on or about September 11, 2022; and

Whereas, at the OAL, the parties agreed to settle the above-captioned matter, and reduced the terms of their agreement to a written “Settlement Agreement and General Release”; and

Whereas, after reviewing the record and the terms of the settlement, the Honorable Jeffrey N. Rabin, Administrative Law Judge (ALJ Rabin) concluded that the settlement met the requirements of *N.J.A.C. 1:1-19.1* and should be approved; and

Whereas, on December 12, 2022, ALJ Rabin issued an *Initial Decision (Settlement)*; and

Whereas, at a special meeting on January 31, 2023, the Commission considered ALJ Rabin’s *Initial Decision (Settlement)*; and

Whereas, at a special meeting on January 31, 2023, the Commission discussed adopting ALJ Rabin’s *Initial Decision (Settlement)* as its Final Decision, but not taking a position on the enforceability of the parties’ written “Settlement Agreement and General Release”; and

Whereas, at its regularly scheduled meeting on February 21, 2023, the Commission reviewed and voted to approve the within decision as accurately memorializing its actions/findings from its special meeting on January 31, 2023; 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 regularly scheduled meeting on February 21, 2023.

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