

***Before the School Ethics Commission
OAL Docket No.: EEC 01319-22
SEC Docket No.: C84-21
Final Decision***

**Elissa Malespina and Johanna Wright,
Complainants**

v.

**Thair Joshua, Courtney Winkfield, Erin Siders,
Shannon Cuttle, Christopher Sabin, Susan Bergin and Ann Marie Maini,
South Orange-Maplewood Board of Education, Essex County,
Respondents**

I. Procedural History

The above-captioned matter arises from a Complaint that was filed with the School Ethics Commission (Commission) on November 24, 2021,¹ by Elissa Malespina and Johanna Wright (collectively referred to as Complainants), alleging that Thair Joshua (Respondent Joshua), Courtney Winkfield (Respondent Winkfield), Erin Siders (Respondent Siders), Shannon Cuttle (Respondent Cuttle), Christopher Sabin (Respondent Sabin), Susan Bergin (Respondent Bergin) and Ann Marie Maini (Respondent Maini) (collectively referred to as Respondents), members of the South Orange-Maplewood 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 Respondents violated *N.J.S.A.* 18A:12-24.1(a) (Counts 1-3), *N.J.S.A.* 18A:12-24.1(c) (Count 3), *N.J.S.A.* 18A:12-24.1(d) (Counts 1 and 3), *N.J.S.A.* 18A:12-24.1(e) (Counts 1 and 3), *N.J.S.A.* 18A:12-24.1(f) (Count 3), and *N.J.S.A.* 18A:12-24.1(g) (Count 3) of the Code of Ethics for School Board Members (Code).

An answer was filed on behalf of Respondents on January 3, 2022. At its special meeting on February 4, 2022, the Commission voted to transmit the above-captioned matter to the Office of Administrative Law (OAL) for a plenary hearing on the alleged violations of the Code.

At the OAL, on June 24, 2022, the ALJ issued an Order on Partial Summary Decision (captioned as an Initial Decision on Summary Decision), that dismissed all allegations except for *N.J.S.A.* 18A:12-24.1(e) in Count 1 and *N.J.S.A.* 18A:12-24.1(c) in Count 3, which proceeded to a hearing.² Following a hearing on December 28, 2022, the ALJ issued an Initial Decision on January 8,

¹ Complainants filed a deficient Complaint on November 24, 2021. Subsequently, Complainants filed an Amended Complaint on the same day, that cured all defects and was deemed compliant with the requirements detailed in *N.J.A.C.* 6A:28-6.3.

² The Commission adopts the Order on Partial Summary Decision's dismissal of *N.J.S.A.* 18A:12-24.1(a) (Counts 1-3), *N.J.S.A.* 18A:12-24.1(d) (Counts 1 and 3), *N.J.S.A.* 18A:12-24.1(e) (Count 3), *N.J.S.A.* 18A:12-24.1(f) (Count 3), and *N.J.S.A.* 18A:12-24.1(g) (Count 3).

2025, finding that Respondents did not violate *N.J.S.A.* 18A:12-24.1(e) in Count 1 and/or *N.J.S.A.* 18A:12-24.1(c) in Count 3, and dismissing the matter.

Complainants filed exceptions to the Initial Decision in accordance with *N.J.A.C.* 1:1-18.4 on January 14, 2025. Respondents filed a reply to exceptions on February 5, 2025.

At its meeting on February 18, 2025, the Commission discussed the above-captioned matter, and at its meeting on March 25, 2025, the Commission voted to adopt the Initial Decision's findings of fact, the legal conclusion that Respondents did not violate *N.J.S.A.* 18A:12-24.1(e) in Count 1 and/or *N.J.S.A.* 18A:12-24.1(c) in Count 3, and the dismissal of the above-captioned matter.

II. Initial Decision

This matter involves two resolutions: Resolution 4147A and 4215. As to Resolution 4147A, at the Board meeting on May 17, 2021, Board members were presented with an agenda "containing nine separate and distinct Resolutions that were joined together for consideration by the Board." *Initial Decision* at 2. Resolution 4147A "contained proposed modifications to eight separate Board policies," and, according to the ALJ, Complainants "both voiced objections to being required to consider and vote on separate and distinct Resolutions and their separate and distinct subparts together," as well as "having to vote yes or no on 4147A because they only had concerns with one policy contained within 4147A entitled Use of Tobacco Products." *Id.* at 2-3. As such, Complainants requested "to sever the proposed changes to the policy on Use of Tobacco Products from 4147A" because "they did not want to have to vote 'No' on all the other policy modifications that they agreed with just because they disagreed with the changes to the Use of Tobacco Products policy." *Id.* at 3.

The ALJ noted that Respondent Joshua "refused to recognize [] Complainants' repeated requests as a Motion to Sever" and he asserted "without reference to any defined policy or procedure that the Board's established process was to consider all proposed policy modifications together." *Ibid.* According to the ALJ, Respondent Joshua asserted "the proper time to modify a Resolution was while it was being developed by the Policy Committee and not while it was before the Board for consideration." *Ibid.*

The ALJ noted, "in an attempt to remedy what had occurred," and with Respondent Joshua's knowledge and consent, Complainant Malespina worked with Board counsel to draft a Resolution to rescind the May 17th vote. *Ibid.* The ALJ further noted that according to Board counsel, "the rules of procedure required that a person who voted in favor of the original Resolution had to offer the Motion to Rescind" and Respondent Joshua agreed to offer the Resolution to rescind at the November 15, 2021, Board meeting. *Ibid.* The ALJ found that prior to entering executive session, Respondent Joshua asked Complainant Malespina if she had the votes to pass the Resolution, and she replied that there was no way for her to know for sure. *Id.* at 4. Ultimately, Respondent Joshua did not make the motion at the November meeting. *Ibid.* After the close of the meeting, Respondent Joshua approached Complainant Malespina, turned off her microphone, then "became very animated and began waving his arms in front of her and getting physically close to her." *Ibid.*

Resolution 4215 was adopted by the Board in October 2021, and requires that all suspensions be approved by the Superintendent. *Id.* at 5. Resolution 4215 was established after the Board "entered into a settlement agreement to resolve a lawsuit filed by parents of minority and disabled students [(Black Parents Workshop)]." *Id.* at 4. The settlement, in part, "required the District to publish its suspension

statistics each month including the racial demographics of the students that are suspended.” *Ibid.* The ALJ found that “[u]sing ideas developed during the Safety and Security committee meetings and the feedback provided by [the Superintendent] the Board drafted Resolution 4215.” *Id.* at 5. Complainants assert that this Resolution violated *N.J.S.A.* 18A:12-24.1(c) because the Board failed to consult with those affected by the Resolution before adopting it. *Ibid.*

As to Count 1, and the alleged violation of *N.J.S.A.* 18A:12-24.1(e), the ALJ found that Complainants did not present any credible evidence that would indicate that Respondent Joshua did anything to circumvent the Board’s authority in failing to make the requested motion to rescind Resolution 4147A. *Id.* at 6. The ALJ further found Complainants did not present any credible evidence as required by *N.J.A.C.* 6A:28-6.4(a)(5) that Respondent Joshua made personal promises or took action beyond the scope of his duties as Board president such that, by its nature, would “compromise the board.” *Ibid.* After a full hearing on the issue, the ALJ found Respondent Joshua’s testimony to be credible. *Ibid.* Respondent Joshua testified that he did not make the motion to rescind Resolution 4147A because he believed Complainant Malespina “had not prepared the appropriate resolution to readopt certain [] policies.” *Ibid.* The ALJ further found that the credibility of Respondent Joshua’s testimony was supported by the fact that he did place the motion to rescind Resolution 4147A before the Board at their next scheduled meeting once the appropriate Resolutions readopting the mandated policies had been prepared. *Id.* at 6-7.

Regarding Respondent Joshua’s aggressive behavior, the ALJ found Complainants have failed to sustain their burden of proof that Respondent Joshua’s actions during or immediately after the November 15, 2021, Board meeting violated *N.J.S.A.* 18A:12-24.1(e). *Id.* at 7. Complainant Malespina testified that she did not “exactly remember everything [Respondent Joshua] said.” *Ibid.* Respondent Joshua testified that “during the exchange with [C]omplainants he did not use any explicit language, no one made any threats and there was no physical contact.” *Ibid.* The ALJ further found that sufficient evidence has not been presented to sustain Complainants’ burden of proof that Respondent Joshua’s actions may have compromised the Board. *Id.* at 8. Although Respondent Joshua’s comments were not professional or respectful, the ALJ found his intent was to address his concerns regarding Complainants’ failure to draft all of the appropriate resolutions. *Ibid.*

As to Count 3, and a violation of *N.J.S.A.* 18A:12-24.1(c), the ALJ found the evidence provided compelling proof that the Superintendent conferred with the District administrators about suspensions in early October 2021, and the Board used that input to create the Resolution at issue. *Ibid.* The ALJ noted the evidence that Complainants presented “proves only that certain District administrators were not in favor of the Resolution, not that they weren’t consulted.” *Id.* at 9. The ALJ further noted the testimony established that the District administrators were “split” regarding suspensions, and there was not any testimony presented to support that teachers nor administrators did not have input in the ongoing discussions on disparities and how suspensions should be handled. *Ibid.* Therefore, the ALJ found that there is sufficient evidence that school administrators were consulted prior to the Board’s drafting and approval of Resolution 4215. *Ibid.* Moreover, the ALJ found that Complainants failed to present any credible evidence that teachers and administrators were “affected” by Resolution 4215. *Ibid.*

Finally, the ALJ concluded that Complainants have failed to sustain their burden of proof that Respondents violated *N.J.S.A.* 18A:12-24.1(c) and/or *N.J.S.A.* 18A:12-24.1(e), and therefore, determined that the matter should be dismissed. *Ibid.*

III. Exceptions

Complainants' Exceptions

Complainants “object to the findings and conclusions reached in the Initial Decision” and request that the Commission “reconsider” the ALJ’s recommendations. Complainants initially argue the ALJ “erroneously concluded that limited consultation with administration was sufficient to satisfy” *N.J.S.A.* 18A:12-24.1(c). However, Complainants further argue the provision requires “meaningful consultation with all those ‘effected’ by policies and plans, including teachers, parents, and students-not just selected administrators.” Complainants maintain the ALJ’s interpretation “was overly narrow, undermining the intent of the statute.”

As to the ALJ’s finding related to a violation of *N.J.S.A.* 18A:12-24.1(e), Complainants assert the conclusion that “Respondent Joshua’s actions did not compromise the Board or exceed his authority is directly contradicted by evidence.” According to Complainants, the ALJ acknowledged that the bundling of Resolutions was improper and that Complainants’ “requests for severance should have been granted.” They contend that Respondent Joshua’s “refusal to allow severance” compromised the Board and violated *N.J.S.A.* 18A:12-24.1(e). Moreover, by relying on Respondent Joshua’s testimony “to conclude that his actions were justified, despite video evidence and witness testimony” to the contrary, the ALJ “failed to reconcile this evidence with the statutory requirement to avoid actions that compromise the Board.”

Complainants further maintain the “extraordinary delay in resolving this case-over three years further obstructed the ability to present compelling evidence,” as “[m]emories of key meetings and discussions have faded, diminishing the [C]omplainants’ ability to rebut conflicting claims.” Complainants note that the prehearing order from March of 2022 originally scheduled a hearing for July 2022, yet the Initial Decision was issued “nearly three years later” resulting in an “extraordinary delay [that] materially prejudiced the complainants.”

Complainants request that the Commission reverse the ALJ’s findings, remand the matter for further proceedings or a full review of the consultation process, address the delays and procedural irregularities and impose penalties consistent with violations of the Act.

Respondents' Reply to Complainants' Exceptions

In their response, Respondents assert that the ALJ accurately noted that “Complainants failed to present sufficient proof at trial to show that Respondent Joshua’s actions compromised the Board or had a tendency to compromise the Board in violation of *N.J.S.A.* 18A:12-24.1(e).” Namely, Respondents maintain Complainants “have not put forth any credible evidence to disturb” the ALJ’s findings. Respondents further maintain Complainants’ “exceptions do not cite to any credible evidence that former Board President Joshua took any action beyond the scope of his duties as board president that would compromise the board.” Nor do the exceptions “put forth any additional facts to prove that” Respondent Joshua violated *N.J.S.A.* 18A:12-24.1(c) by “allegedly ‘failing to consult those affected’ by the suspension before voting to adopt it.”

Respondents contend “the gravamen of the instant Exceptions before this Tribunal relates to Complainants’ concerns with alleged ‘delays in procedural steps and adjudication’ of the underlying Complaint in this matter.” Respondents further contend that Complainants were the reason for the delay

in the underlying Complaint. Respondents note that although they “maintain that the timing of [the ALJ’s] Initial Decision following the close of the record is of no moment, it must be noted that Complainants caused much of the delays with respect to adjudication of the matter.” Respondents further note Complainants’ “attempted to retain counsel numerous times throughout the course of the proceedings, only to result in representing themselves pro-se.” Respondents maintain although Complainants “are entitled to seek out counsel as they see fit, Respondents bring these facts to the Commission’s attention to add context to the length of the proceedings and any delays that may have resulted from same.”

Nevertheless, Respondents reaffirm that Complainants have failed “to cite to any factual or legal evidence to overturn” the ALJ’s findings. According to Respondents, the ALJ “weighed the testimony from all witnesses and made sound findings with respect to the law to conclude that Complainants failed to sustain their burden of proof that [R]espondents have violated *N.J.S.A.* 18A:12-24.1(c) and/or *N.J.S.A.* 18A:12-24.1(e),” and therefore, the Commission should accept the ALJ’s findings and Initial Decision.

IV. Analysis

Upon a thorough, careful, and independent review of the record, the Commission adopts the ALJ’s factual findings, the legal conclusion that Respondents did not violate *N.J.S.A.* 18A:12-24.1(e) in Count 1 and/or *N.J.S.A.* 18A:12-24.1(c) in Count 3 and the dismissal of this matter.

The Commission will first address Complainants’ exceptions about the “delay in resolving this case” obstructing the Complainants’ “ability to present compelling evidence.” Although the Initial Decision was issued by the ALJ on January 8, 2025, the Commission notes that the hearing was held in December of 2022, about a year after the events in this Complaint occurred. Therefore, there was no substantive delay with regard to the fact-finding in this matter.

N.J.S.A. 18A:12-24.1(e) requires board members to recognize that authority rests with the board of education and not make any personal promises nor take any private action that may compromise the board. Whether a Board member makes a motion or refuses to make a motion is his or her own prerogative, and Respondent Joshua did not violate ethics rules by failing to make a motion, even if he may have previously advised that he intended to do so. Additionally, while the ALJ found the manner in which Respondent Joshua made his comments to Complainants following the Board meeting may not have been professional or respectful, the Commission agrees with the ALJ’s finding that Respondent Joshua’s intent was to address his concerns regarding the appropriate resolutions. The Commission also accepts the ALJ’s determination that Complainants have not proven Respondent Joshua’s actions were personal promises or private actions that have compromised the board or may have compromised the board. Therefore, the Commission accepts the ALJ’s conclusion that a violation of *N.J.S.A.* 18A:12-24.1(e) has not been established.

The Commission disagrees with Complainants’ exceptions that the ALJ’s reliance on Respondent Joshua’s testimony to conclude that his actions were justified is contradicted by the evidence. The Commission notes that the legal standard with respect to objections of this type is well established,³ and in the present instance, the Commission finds the ALJ’s credibility and fact

³ *N.J.S.A.* 52:14B-10(c) states in pertinent part: “the agency head may not reject or modify any findings of fact as to issues of credibility of lay witness testimony unless it is first determined from a review of the record that

determinations to be both clearly explained in the Initial Decision and sufficiently supported by the record. The Commission further finds that Complainants have offered nothing in their papers that would warrant disturbing the deference to which the ALJ – as finder of fact with the greatest opportunity to observe the demeanor of witnesses – is entitled to in this regard. *In re Morrison*, 216 N.J. Super. 143, 158 (App. Div. 1987).

N.J.S.A. 18A:12-24.1(c) requires board members to confine their board actions to policy making, planning, and appraisal, and to frame policies and plans only after the board has consulted those who will be affected by them. The ALJ found that there was sufficient evidence that school administrators were consulted prior to the Board’s drafting and approval of Resolution 4215. Based on the ALJ’s findings of fact, the Commission agrees with the ALJ that a violation of N.J.S.A. 18A:12-24.1(c) has not been established.

The Commission is not persuaded by Complainants’ exceptions. The Commission notes that the evidence found by the ALJ demonstrated that the Superintendent conferred with the District administrators about suspensions in early October 2021, and the Board used that input to then create Resolution 4215. In addition, the Commission notes that Complainants did not present any evidence that teachers and administrators were “affected” by Resolution 4215, and therefore, had to have been consulted about the Resolution. The Commission is therefore not influenced by Complainants’ argument that all those ‘effected’ by the Board’s policies and plans were not consulted.

Accordingly, the Commission concurs with the Initial Decision that this matter should be dismissed.

V. Decision

Upon review, the Commission adopts the Initial Decision’s factual findings, the legal conclusion that Respondents did not violate N.J.S.A. 18A:12-24.1(e) in Count 1 and/or N.J.S.A. 18A:12-24.1(c) in Count 3, and the dismissal of the above-captioned matter.

Therefore, this is a final agency decision and is appealable only to the Superior Court-Appellate Division. *See*, N.J.A.C. 6A:28-9.10(b) and *New Jersey Court Rule* 2:2-3(a). Under *New Jersey Court Rule* 2:4-1(b), a notice of appeal must be filed with the Appellate Division within 45 days from the date of mailing of this decision.

Robert W. Bender, Chairperson

Mailing Date: March 25, 2025

the findings are arbitrary, capricious or unreasonable or are not supported by sufficient, competent, and credible evidence in the record.”

***Resolution Adopting Decision
in Connection with C84-21***

Whereas, at its special meeting on February 4, 2022, the School Ethics Commission (Commission) voted to transmit the above-captioned matter to the Office of Administrative Law (OAL) for a hearing; and

Whereas, the Administrative Law Judge (ALJ) issued an Order on Partial Summary Decision (captioned as an Initial Decision on Summary Decision) on June 24, 2022, that dismissed all allegations except for *N.J.S.A.* 18A:12-24.1(e) in Count 1 and *N.J.S.A.* 18A:12-24.1(c) in Count 3, which proceeded to a hearing; and

Whereas, the ALJ issued an Initial Decision dated January 8, 2025; and

Whereas, in the Initial Decision, the ALJ found that Respondents did not violate *N.J.S.A.* 18A:12-24.1(e) in Count 1 and/or *N.J.S.A.* 18A:12-24.1(c) in Count 3, and ordered the dismissal of the above-captioned matter; and

Whereas, Complainants filed exceptions to the Initial Decision, and Respondents filed a reply to the exceptions; and

Whereas, at its meeting on February 18, 2025, the Commission reviewed and discussed the record, including the ALJ's Order on Partial Summary Decision and Initial Decision; and

Whereas, at its meeting on February 18, 2025, the Commission discussed adopting the Order on Partial Summary Decision, the Initial Decision's findings of fact, the legal conclusion that Respondents did not violate *N.J.S.A.* 18A:12-24.1(e) in Count 1 and/or *N.J.S.A.* 18A:12-24.1(c) in Count 3, and the dismissal of the above-captioned matter; and

Whereas, at its meeting on March 25, 2025, the Commission reviewed and voted to approve the within decision as accurately memorializing its actions/findings from its meeting on February 18, 2025, and

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

Robert W. Bender, Chairperson

I hereby certify that this Resolution was duly adopted by the School Ethics Commission at its meeting on March 25, 2025.

Brigid C. Martens, Director
School Ethics Commission