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DR. EDWARD A. KLISZUS	:	BEFORE THE SCHOOL
	:	ETHICS COMMISSION
	:	
v.	:	
	:	
RHONDA WILLIAMS BEMBRY	:	SEC Docket No. C29-10
HACKENSACK BOARD OF EDUCATION	:	OAL Dkt. No. 04301-11
BERGEN COUNTY	:	DECISION ON SETTLEMENT
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PROCEDURAL HISTORY

This matter arises from a complaint filed on October 4, 2010 by Dr. Edward A. Kliszus, Superintendent of Schools, against Rhonda Williams Bembry, a member of the Hackensack Board of Education alleging that the respondent violated <u>N.J.S.A.</u> 18A:12-24.1(b), (c), (d), (e), (f), (g), (h) and (i) of the Code of Ethics for School Board Members. After being granted an extension for good cause shown, on January 19, 2011, a Motion to Dismiss in Lieu of Answer was filed on behalf of the respondent. The motion included an allegation that the complaint was frivolous pursuant to <u>N.J.S.A.</u> 18A:12-29(e). Pursuant to <u>N.J.A.C.</u> 6A:28-8.2(a), a responsive statement was filed on behalf of the complainant on February 3, 2011.

At its meeting on February 22, 2011, the Commission voted to grant the respondent's Motion to Dismiss the allegations in Counts 1, 2, 3 and 4 that the respondent violated <u>N.J.S.A.</u> 18A:12-24.1(h) and the allegations in Counts 2 and 3 that the respondent violated N.J.S.A. 18A:12-24.1(c). The Commission voted to deny the motion as to all other allegations and further found that the complaint was not frivolous, in accordance with the standard set forth at <u>N.J.A.C.</u> 6A:28-1.2. Pursuant to <u>N.J.A.C.</u> 6A:28-10.8(a), the Commission voted to transmit this matter to the Office of Administrative Law (OAL) for hearing, after the respondent filed her answer to the remaining claims.

After transmittal of this matter to the OAL, the parties submitted a Consent Order and supporting Affidavit of Rhonda Williams Bembry which sets forth the terms and conditions of a proposed settlement of the issues raised in the complaint. The Administrative Law Judge (ALJ) concluded that the Consent Order meets the requirements of <u>N.J.A.C.</u> 1:1-19.1 and the matter was returned to the Commission for review. Pursuant to <u>N.J.S.A.</u> 52:14B-10(c) and <u>N.J.A.C.</u> 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 July 26, 2011 meeting. The Commission determined to accept the proposed settlement.

ANALYSIS

In her affidavit, the respondent acknowledged: (1) that she engaged in communication both publicly and by email that was improper for a Board member; (2) that she made improper comments at Board meetings on June 8, 2010 and August 23, 2010; and (3) that she engaged in conduct and communication regarding the hiring of personnel that was improper. The respondent further acknowledged that her conduct violated <u>N.J.S.A.</u> 18A:12-24.1(b), (d), (e), (f), (g) and (i) of the Code of Ethics for School Board Members. (Affidavit of Rhonda Williams Bembry at pp. 1-2) The Consent Order states that the settlement of the within matter "shall not constitute precedent or be considered an admission of guilt in other pending or future litigation." (Consent Order at p. 2) The parties agree that the respondent shall be subject to a penalty of reprimand and that by agreeing to this penalty, the respondent agrees to waive any and all hearings to which she is entitled; she further agrees not to oppose or appeal the reprimand. (<u>Id</u>.)

While the Commission takes note of the numerous allegations that were raised by the complainant in this matter and is admittedly troubled by the complainant's willingness to consent to a resolution which includes a penalty inconsistent with the Commission's prior rulings, given the multiple violations acknowledged by the respondent in this matter,¹ the Commission also recognizes:

the strong public policy of this State favoring the settlement of litigation, including contested cases before the OAL. Settlements permit parties to resolve disputes on mutually acceptable terms rather than exposing themselves to the uncertainties of litigation. See Morris County Fair Hous. Council v. Boonton Township, 197 N.J. Super. 359, 366, 484 A.2d 1302 (Law Div. 1984), aff'd o.b., 209 N.J.Super. 108, 506 A.2d 1284 (App. Div. 1986). "Settlements also save parties litigation expenses and facilitate the administration of the courts by conserving judicial resources." Ibid. Consequently, settlements are generally upheld absent clear and convincing evidence of fraud or other compelling circumstances. See Nolan v. Lee Ho, 120 N.J. 465, 472, 577 A.2d 143 (1990) Ocean County Walton League v. DEP, 303 N.J.Super. 1, 10 (App. Div. 1997).

Additionally, where the parties to the matter are school officials, the conservation of public resources necessarily becomes a compelling factor to be weighed.

¹ See, <u>I/M/O Julia Hankerson, Woodbine Bd. of Ed., Cape May County</u>, C36-02 (June 24, 2003) Commissioner of Education Decision No. 475-03SEC, decided August 14, 2003; <u>Nathalie Yafet v. Elbert Smith, Hillside Bd. of Ed.,</u> <u>Union County</u>, C24-07 (October 27, 2008), <u>aff'd</u>, Commissioner of Education Decision No. 156-09A, decided May 15, 2009; and <u>Jacobs v. Delbury</u>, <u>Sussex Wantage Reg'l Bd. of Ed.</u>, <u>Sussex County</u>, C44-07 (November 23, 2008) Commissioner of Education Decision No. 7-09SEC, decided January 9, 2009.

DECISION

For the reasons set forth above, the Commission adopts the Initial Decision of the ALJ accepting the Consent Order signed by the parties in this matter.

PENALTY

Pursuant to <u>N.J.S.A.</u> 18A:12-29(c), this decision shall be forwarded to the Commissioner of Education for review of the recommended sanction of reprimand.

Robert W. Bender Chairperson

Mailing Date: August 24, 2011

Resolution Adopting Decision – C29-10

Whereas, pursuant to <u>N.J.A.C.</u> 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 a Consent Order setting for the terms and conditions of a settlement; and

Whereas, the Administrative Law Judge concluded that the Consent Order met the requirements of <u>N.J.A.C</u>. 1:1-19.1; and

Whereas, at its meeting on July 26, 2011, 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 Consent Order;

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 August 23, 2011.

Joanne Boyle, Executive Director School Ethics Commission