

***Before the School Ethics Commission***  
***OAL Docket No.: EEC-10178-20***  
***SEC Docket No.: C18-20 and C22-20 (Consolidated)***  
***Final Decision***

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***In the Matter of Kevin McElroy,***  
**Black Horse Pike Regional Board of Education, Camden County,**  
***Respondent***

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**I. Procedural History**

This matter arises from two (2) separate but factually similar Complaints. In **C18-20**, a Complaint was filed on May 5, 2020, by Patricia Wilson,<sup>1</sup> Dawn Leary, Kevin Bucceroni, Jay McMullin, Michael Eckmeyer, Kaitlyn Hutchinson, Joyce Ellis, and Jennifer Storer (Complainants), members of the Black Horse Pike Regional Board of Education (Board), alleging that Kevin McElroy (Respondent), also a member of the Board, violated the School Ethics Act (Act), *N.J.S.A.* 18A:12-21 *et seq.* By correspondence dated May 5, 2020, Complainants were notified that the Complaint was deficient, and required amendment before the School Ethics Commission (Commission) could accept their filing. On May 14, 2020, Complainants cured all defects and filed an Amended Complaint (Complaint) that was deemed compliant with the requirements detailed in *N.J.A.C.* 6A:28-6.3. The Complaint alleges that Respondent violated *N.J.S.A.* 18A:12-24.1(e) and *N.J.S.A.* 18A:12-24.1(i) of the Code of Ethics for School Board Members (Code). The allegations in the Complaint are further summarized in section II below.

On May 14, 2020, the Complaint was served on Respondent, via electronic mail, notifying him that charges were filed against him with the Commission, and advising that he had twenty (20) days to file a responsive pleading.<sup>2</sup>

In **C22-20**, a Complaint was filed on May 22, 2020, by Kimberly Loring and Jamie Robertson, individuals employed by the Board, alleging that Kevin McElroy (Respondent), a member of the Board, violated the Act, *N.J.S.A.* 18A:12-21 *et seq.* By correspondence dated May 22, 2020, Complainants were notified that the Complaint was deficient, and required amendment before the Commission could accept their filing. On May 28, 2020, Complainants cured all defects and filed an Amended Complaint (Complaint) that was deemed compliant with the requirements detailed in *N.J.A.C.* 6A:28-6.3. The Complaint alleges that Respondent violated *N.J.S.A.* 18A:12-24.1(e) and *N.J.S.A.* 18A:12-24.1(i) of the Code. The allegations in the Complaint are further summarized in section II below.

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<sup>1</sup> Ms. Wilson was designated as the lead Complainant in connection with C18-20.

<sup>2</sup> Due to the ongoing Coronavirus (COVID-19) pandemic, service of process was effectuated by the Commission through electronic transmission only.

On May 29, 2020, the Complaint was served on Respondent, via electronic mail, notifying him that charges were filed against him with the Commission, and advising that he had twenty (20) days to file a responsive pleading.<sup>3</sup>

Complainants collectively argue that Respondent violated *N.J.S.A.* 18A:12-24.1(e) because, at the Booster Club Meeting for the Timber Creek softball team, he behaved “in a way which compromised the integrity of the entire Board by using his position of Board President to intimidate parents” and the new Head Coach (Complainant Robertson). Complainants collectively further assert that Respondent’s conduct at the Booster Club Meeting for the Timber Creek softball team, and with the new Head Coach in particular, violated *N.J.S.A.* 18A:12-24(i) because he (Respondent) did not “support and protect school personnel in proper performance of their duties” when he threatened the new Head Coach’s job, and attempted to remove the former Head Coach from her position the year before.

By correspondence dated June 2, 2020, the parties were advised that, pursuant to its authority as set forth in *N.J.A.C.* 6A:28-6.6, the Commission **consolidated** C18-20 and C22-20. The Commission’s decision to consolidate the above-captioned matters was based on a review of (1) the identity of the parties in each matter; (2) the nature of all questions of fact and law respectively involved; (3) the advisability generally of disposing of all aspects of a controversy in a single proceeding; and (4) other matters appropriate to a prompt and fair resolution of the issues. *N.J.A.C.* 6A:28-6.6(b). More specifically, because the parties mutually consented, both matters have the same Respondent, Respondent is represented by the same counsel, and each Complaint alleges that the same general conduct/action forms the basis for the alleged violations of the Act, *N.J.S.A.* 18A:12-22 *et seq.*, the Commission determined that, in the interest of efficiency, it can resolve both Complaints in a consolidated matter.

Following consolidation, Respondent filed a singular Motion to Dismiss in Lieu of Answer (Motion to Dismiss) addressing the allegations in both Complaints. On July 10, 2020, the Complainants in C18-20 filed a response to the Motion to Dismiss, and on July 13, 2020, the Complainants in C22-20 filed a separate response to the Motion to Dismiss.

The parties were notified by correspondence dated August 17, 2020, that this consolidated matter would be placed on the Commission’s agenda for its meeting on August 25, 2020, in order to make a determination regarding the Motion to Dismiss. At its meeting on August 25, 2020, the Commission considered the filings in this consolidated matter and, at its meeting on September 29, 2020, the Commission voted to deny the Motion to Dismiss in its entirety. Based on its findings, the Commission also voted to direct Respondent to file an Answer to Complaint (Answer) as to the allegations in the Complaint, and to transmit the matter to the Office of Administrative Law (OAL) following receipt of the Answer.

On October 16, 2020, Respondent filed an Answer, and upon receipt of the Answer, the Commission transmitted the matter to the OAL for a hearing as a contested case pursuant to

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<sup>3</sup> Due to the ongoing Coronavirus (COVID-19) pandemic, service of process was effectuated by the Commission through electronic transmission only.

*N.J.S.A.* 52:14B-1 to -15 and *N.J.S.A.* 52:14F1 to -13. At the OAL, the matter was assigned to the Honorable Tama B. Hughes, Administrative Law Judge (ALJ Hughes). After the matter was transmitted to the OAL, the parties agreed to amicably resolve the matter, and submitted an executed “Settlement Agreement” to ALJ Hughes, whereby Respondent admitted to a violation of *N.J.S.A.* 18A:12-24.1(i) and agreed to a three (3) month suspension from his position as a board member, and the parties agreed to dismiss the remaining allegation regarding a violation of *N.J.S.A.* 18A:12-24.1(e). On August 19, 2021, ALJ Hughes issued an Initial Decision, which approves the settlement, and fully incorporates the Settlement Agreement further described below.<sup>4</sup>

The Commission acknowledged receipt of ALJ Hughes’ Initial Decision on August 19, 2021; therefore, the forty-five (45) day statutory period for the Commission to issue a Final Decision was October 4, 2021. 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 November 18, 2021.

As part of the Settlement Agreement the parties agreed to waive the right to file Exceptions to the Initial Decision, and thus, none were filed.

At a meeting on September 21, 2021, the Commission considered ALJ Hughes’ Initial Decision and at its meeting on October 19, 2021, the Commission voted to adopt ALJ Hughes’ Initial Decision as its Final Decision, but to clarify a portion of the confidentiality provision in paragraph two (2) of the parties’ Settlement Agreement.

## **II. Initial Decision**

At the OAL, on August 11, 2021, the parties agreed to settle all issues in dispute, and executed a Settlement Agreement (J-1), which reads in relevant part:

1. Respondent, Kevin McElroy, admits to a violation of the Board Member Code of Ethics, *N.J.S.A.* 18A:12-24.1(i) and agrees to accept a three (3) month suspension from his position as a Board Member with the Black Horse Pike Regional Board of Education. The allegation regarding a violation of the Board Member Code of Ethics, *N.J.S.A.* 18A:12-24.1(e) shall be dismissed. Said suspension shall be effective seven (7) days from the adoption of this Settlement Agreement by the School Ethics Commission.
2. Except where permitted by applicable law, the parties agree to keep this matter and the terms of this settlement agreement confidential. The parties agree that any comment regarding this matter shall be limited to the fact that the matter has been resolved as outlined above, and any such comment shall be made in a professional manner and shall not consist of any derogatory or inflammatory language.

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<sup>4</sup> The Settlement Agreement is attached to ALJ Hughes’ Initial Decision as “J-1.”

Therefore, following her review, ALJ Hughes issued an Initial Decision incorporating the terms of the Settlement Agreement and, with the following findings:

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

ALJ Hughes concludes the agreement meets the requirements of *N.J.A.C.* 1:1-19.1 and the settlement should be approved. ALJ Hughes also ordered that the parties comply with the settlement terms and ordered that the proceedings be concluded.

### III. Analysis

Following a careful and independent review of the complete record, including the parties' Settlement Agreement, the Commission **adopts** ALJ Hughes' Initial Decision as its Final Decision, but wishes to clarify paragraph two (2) of the parties' Settlement Agreement.

Paragraph two of the executed Settlement Agreement states, in relevant part, that **“Except where permitted by applicable law**, the parties agree to keep this matter and the terms of this settlement agreement confidential.” (emphasis added). The Commission avers that the “applicable law” referenced therein refers to *N.J.A.C.* 6A:28-10.12(d), which states:

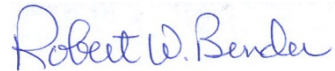
If the Commissioner imposes a penalty of censure, suspension or removal, the Commission shall adopt a Resolution at its next meeting following the imposition of the sanction by the Commissioner and **shall direct that the Resolution be read at the next regularly scheduled public meeting of the district board of education or charter school board of trustees following its adoption by the Commission** and posted for a period of not less than 30 days in such places as the board posts its public notices.

(emphasis added).

In light of the above, the Commission clarifies that the above referenced provision in the Settlement Agreement is consistent with *N.J.A.C.* 6A:28-10.12(d) and otherwise accepts the remaining provisions therein.

#### **IV. Decision**

Accordingly, following its independent review, the Commission hereby adopts ALJ Hughes' Initial Decision in the above captioned matter as its Final Decision, and clarifies the "applicable law" as referenced in paragraph two (2) of the parties' Settlement Agreement. Consequently, this matter is hereby dismissed.



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Robert W. Bender, Chairperson

Mailing Date: October 19, 2021

***Resolution Adopting Decision  
in Connection with C18-20 and C22-20 (Consolidated)***

***Whereas***, at its meeting on September 29, 2020, the School Ethics Commission (Commission) voted to transmit C18-20 and C22-20 (Consolidated) to the Office of Administrative Law (OAL) for a plenary hearing; and

***Whereas***, while at the OAL, the parties submitted an executed “Settlement Agreement” to the Honorable Tama B. Hughes, Administrative Law Judge (ALJ Hughes), for review; and

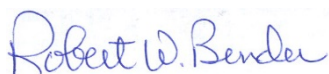
***Whereas***, ALJ Hughes reviewed the parties executed “Settlement Agreement,” and found that (1) the parties have voluntarily agreed to the settlement as evidenced by the signatures of the parties or their representatives, and (2) the settlement fully disposes of all issues in controversy and is consistent with law; and

***Whereas***, at a meeting on September 21, 2021, the Commission considered ALJ Hughes’ Initial Decision; and

***Whereas***, at its meeting on September 21, 2021, the Commission discussed adopting ALJ Hughes’ Initial Decision in the above-captioned matter as its Final Decision, but clarifying the “applicable law” as referenced in paragraph two (2) of the parties’ Settlement Agreement; and

***Whereas***, at its meeting on October 19, 2021, the Commission reviewed and voted to approve the within decision as accurately memorializing its actions/findings from its meeting on September 21, 2021; 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 October 19, 2021.

*Salma T. Chand*

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Salma T. Chand, Executive Director  
School Ethics Commission