

***Before the School Ethics Commission
OAL Docket No.: EEC-05529-20
SEC Docket No.: C72-19
Final Decision***

**Andrew Meehan,
Complainant**

v.

**Chanina Nakdimen,
Lakewood Board of Education, Ocean County,
Respondent**

I. Procedural History

This matter arises from a Complaint that was initially filed with the School Ethics Commission (Commission) on December 6, 2019,¹ by Andrew Meehan (Complainant), alleging that Chanina Nakdimen (Respondent), a member of the Lakewood Board of Education (Board), violated the School Ethics Act (Act), *N.J.S.A.* 18A:12-21 *et seq.* The Complaint alleged that Respondent violated *N.J.S.A.* 18A:12-24.1(b) and *N.J.S.A.* 18A:12-24.1(c) of the Code of Ethics for School Board Members (Code).

On February 6, 2020, the Complaint was served on Respondent, via regular and certified 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. On February 18, 2020, Respondent filed a Motion to Dismiss in Lieu of Answer (Motion to Dismiss), and Complainant filed a response to the Motion to Dismiss on April 1, 2020.

Thereafter, and at its meeting on May 19, 2020, the Commission adopted a decision granting the Motion to Dismiss as to the alleged violation of *N.J.S.A.* 18A:12-24.1(b), but denying the Motion to Dismiss as to the alleged violation of *N.J.S.A.* 18A:12-24.1(c). Based on its findings, the Commission also directed Respondent to file an Answer to the Complaint (Answer), and voted to transmit the matter to the Office of Administrative Law (OAL) following receipt of Respondent's Answer. On June 11, 2020, Respondent filed an Answer as directed, and the matter was transmitted to the OAL on June 12, 2020.

At the OAL, the matter was assigned to the Honorable Susan L. Olgiati, Administrative Law Judge (ALJ Olgiati). *Initial Decision* at 1. On or about March 26, 2021, the parties agreed to

¹ By correspondence dated December 10, 2019, Complainant was notified that the Complaint was deficient, and required amendment before his filing could be accepted. On February 5, 2020, Complainant 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.

settle the above-captioned matter, and placed the terms of their settlement on the record. *Id.* at 2. After reviewing the record and the terms of the settlement, ALJ Olgiati concluded that the settlement met the requirements of *N.J.A.C.* 1:1-19.1 and should be approved. *Id.* at 3. Thereafter, and on May 4, 2021, ALJ Olgiati issued her Initial Decision ordering that the proceedings be concluded. *Id.* at 4.

The Commission acknowledged receipt of ALJ Olgiati's Initial Decision on May 4, 2021; therefore, the forty-five (45) day statutory period for the Commission to issue its Final Decision was June 18, 2021. Prior to June 18, 2021, 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 August 2, 2021.

At a special meeting on June 15, 2021, the Commission reviewed ALJ Olgiati's Initial Decision and, at its meeting on July 27, 2021, the Commission voted to adopt ALJ Olgiati's Initial Decision as its Final Decision. However, the Commission also voted not to take a position on the enforceability of the terms and conditions of the parties' oral settlement, and not to take a position on whether, based on the current record, it was a "conflict" for public funds to be used to pay for Respondent's legal counsel in connection with this proceeding.

II. Analysis

As detailed in ALJ Olgiati's Initial Decision, and as memorialized in the transcript of the proceedings from March 26, 2021, in exchange for Respondent's agreement to "read a statement of apology" at a Board meeting, Complainant agreed to withdraw his Complaint. *Id.* at 2 (referring to Attachment 1 of the *Initial Decision*). To that end, Respondent provided a copy of a Board Resolution confirming that, at a Board meeting on April 21, 2021, he (Respondent) read the following statement:

On October 3, 2019, an opinion article written by me was published in the Star-Ledger. The article, which was titled, "Lakewood Board Member: Agitators are trying to divide our community," was not authorized by the Board of Education. The article was not intended to be offensive to anyone, and I apologize if it was taken as such.

Id. (referring to Attachment 2 of the *Initial Decision*). Following Respondent's reading of the foregoing apology, Complainant "confirmed" that the statement "was made in accordance with the terms of their agreement." *Id.* However, Complainant also "raised his concern regarding the use of public funds to pay for [R]espondent's legal fees in this matter," and "urged the ALJ to consider making a final decision before closing this matter." *Id.* As to the latter request, ALJ Olgiati stated, "[w]hile the use of public funds may be a legitimate concern, it is beyond the scope of my jurisdiction which, in this matter, is limited to determining whether ... [Respondent's] actions violated the Code" *Id.*

Ultimately, and after reviewing the record and the terms of the settlement, ALJ Olgiati found that:

1. The parties have voluntarily agreed to the settlement as evidenced by their March 26, 2021, statements; their placement of the terms of the agreement on the record; their agreement to be bound by the terms; and their mutual confirmation that the terms of the agreement have been complied with.
2. The settlement fully disposes of all issues in controversy and is consistent with law.

Id. at 3. Having concluded that the parties' agreement met with the requirements of *N.J.A.C.* 1:1-19.1 and should be approved, ALJ Olgiati ordered that the proceedings be concluded.

III. Decision

Upon review, and for the reasons set forth above, the Commission adopts ALJ Olgiati's Initial Decision as its Final Decision, but does not take a position on the enforceability of the terms and conditions of the parties' oral settlement.

As for Complainant's apprehension with Respondent's use of taxpayer/public funds to defend himself, and contention that it is a "conflict of interest" for Respondent to be represented by the Board's attorney in these proceedings, the Commission agrees that same could constitute, in certain circumstances, a violation(s) of the Act. However, before the Commission can render such a determination, Complainant, or any other interested party, would need to file a Complaint with the Commission which specifically details the behavior perceived to be a violation of the Act, and the provision(s) of the Act purportedly violated by such behavior. Absent such a filing, the Commission is constrained to review the factual allegations asserted in the Complaint and, in this case, that does not include any averments as to Board counsel's representation of Respondent.

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

Robert W. Bender, Chairperson

Mailing Date: July 27, 2021

***Resolution Adopting Decision
in Connection with C72-19***

Whereas, at its meeting on May 19, 2020, and following receipt of Respondent’s Answer to Complaint (Answer), the School Ethics Commission (Commission) voted to transmit the above-captioned matter to the Office of Administrative Law (OAL); and

Whereas, at the OAL, the parties agreed to settle the above-captioned matter, and placed the terms of their settlement on the record; and

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

Whereas, on May 4, 2021, ALJ Olgiati issued her Initial Decision ordering that the proceedings be concluded; and

Whereas, at a special meeting on June 15, 2021, the Commission considered ALJ Olgiati’s Initial Decision; and

Whereas, at a special meeting on June 15, 2021, the Commission discussed adopting ALJ Olgiati’s Initial Decision as its Final Decision, but not taking a position on the enforceability of the terms and conditions of the parties’ oral settlement, and not taking a position on whether, based on the current record, it was a “conflict” for public funds to be used to pay for Respondent’s legal counsel in connection with this proceeding; and

Whereas, at its meeting on July 27, 2021, the Commission reviewed and voted to approve the within decision as accurately memorializing its actions/findings from its special meeting on June 15, 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.

Robert W. Bender, Chairperson

I hereby certify that this Resolution was duly adopted by the School Ethics Commission at its public meeting on July 27, 2021.

Kathryn A. Whalen, Director
School Ethics Commission