

***Before the School Ethics Commission***  
***OAL Docket No.: EEC-01955-21***  
***OAL Docket No.: EEC 02288-22 (On Remand)***  
***SEC Docket No.: C35-20***  
***Final Decision***

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**Mervin Rose,  
*Complainant***

v.

**Guy Francis, Ronnie McDowell, Kalisha Morgan, and Kim Ruiz,  
Township of Union Board of Education, Union County,  
*Respondents***

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**I. Procedural History**

The above-captioned matter arises from a Complaint that was filed on July 18, 2020, by Mervin Rose (Complainant), alleging that Guy Francis (Respondent Francis), Ronnie McDowell (Respondent McDowell), Kalisha Morgan (Respondent Morgan), and Kim Ruiz (Respondent Ruiz) (collectively referred to as Respondents), members of the Township of Union Board of Education (Board), violated the School Ethics Act (Act), *N.J.S.A. 18A:12-21 et seq.* More specifically, the Complaint averred that Respondents violated *N.J.S.A. 18A:12-24.1(e)* of the Code of Ethics for School Board Members (Code) in Count 1, violated *N.J.S.A. 18A:12-24.1(f)* of the Code in Count 2, violated *N.J.S.A. 18A:12-24.1(g)* of the Code in Count 3, and violated *N.J.S.A. 18A:12-24.1(i)* of the Code in Count 4.

At its meeting on January 26, 2021, and after thoroughly considering Respondents' Motion to Dismiss in Lieu of Answer (Motion to Dismiss) and Complainant's response thereto, the School Ethics Commission (Commission) adopted a decision denying the Motion to Dismiss in its entirety, directing Respondents to file an Answer to Complaint (Answer), and transmitting the matter to the Office of Administrative Law (OAL) following receipt of Respondents' Answer. On February 9, 2021, Respondents filed an Answer as directed, and the above-captioned matter was immediately transmitted to the OAL.

At the OAL, the matter was assigned to the Honorable Thomas R. Betancourt, Administrative Law Judge (ALJ Betancourt). On January 27, 2022, ALJ Betancourt issued an *Initial Decision (Summary Decision)* detailing his findings of fact and legal analysis and conclusions. On February 10, 2022, Complainant filed Exceptions to the *Initial Decision (Summary Decision)*, and Respondents filed their reply to Complainant's Exceptions on February 14, 2022.

At its regularly scheduled meeting on March 22, 2022, the Commission adopted a decision **remanding** the above-captioned matter to the OAL because, although Complainant alleged that Respondents violated *N.J.S.A. 18A:12-24.1(e)* (Count 1), *N.J.S.A. 18A:12-24.1(f)* (Count 2), violated *N.J.S.A. 18A:12-24.1(g)* (Count 3), and *N.J.S.A. 18A:12-24.1(i)* (Count 4) of

the Code, ALJ Betancourt concluded that there were “no material facts” suggesting that Respondents violated *N.J.S.A.* 18A:12-24(e), *N.J.S.A.* 18A:12-24(f), *N.J.S.A.* 18A:12-24(g), and/or *N.J.S.A.* 18A:12-24(i). In effect, the above-captioned matter was remanded so that ALJ Betancourt could consider whether, with the standard for summary decision in mind, the factual evidence supported the violations of the Act pled in the Complaint, namely *N.J.S.A.* 18A:12-24.1(e) (Count 1), *N.J.S.A.* 18A:12-24.1(f) (Count 2), *N.J.S.A.* 18A:12-24.1(g) (Count 3), and *N.J.S.A.* 18A:12-24.1(i) (Count 4).

On remand, ALJ Betancourt conducted a telephone conference on April 7, 2022, and counsel “agreed no further hearing was required”; therefore, the *Initial Decision (On Remand)* relies on the record previously established (in the *Initial Decision (Summary Decision)*), and remained a motion for summary decision. *Initial Decision (On Remand)* at 2.

On July 13, 2022, ALJ Betancourt issued an *Initial Decision (On Remand)*, detailing his findings of fact, and conclusions of law. The Commission acknowledged receipt of ALJ Betancourt’s *Initial Decision (On Remand)* on the date it was issued (July 13, 2022); therefore, the forty-five (45) day statutory period for the Commission to issue a Final Decision was August 29, 2022.<sup>1</sup> Prior thereto, 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, including the parties’ Exceptions. Pursuant to *N.J.S.A.* 52:14B-10(c) and *N.J.A.C.* 1:1-18.8, the Commission was granted an extension until October 13, 2022.

On or about July 27, 2022, Complainant filed Exceptions to the *Initial Decision (On Remand)*, and Respondents filed their reply on July 28, 2022. Thereafter, the Commission considered the full record in the above-captioned matter at its regularly scheduled meeting on August 23, 2022, and at a special meeting on September 14, 2022, the Commission voted to adopt ALJ Betancourt’s findings of fact; to adopt the legal conclusion that, based on the evidence presented, Respondents did not violate *N.J.S.A.* 18A:12-24.1(e) (Count 1), *N.J.S.A.* 18A:12-24.1(f) (Count 2), *N.J.S.A.* 18A:12-24.1(g) (Count 3), and/or *N.J.S.A.* 18A:12-24.1(i) (Count 4); and to dismiss the above-captioned matter.

## **II. Initial Decision on Remand**

Based on the record previously established, ALJ Betancourt issued the following *findings of fact*:

1. Respondents authored a letter entitled “Open Letter from Current and Past Board of Education Members of Color to District Administration and School Community” (Letter) dated June 3, 2020.
2. The Letter was authored following the death of George Floyd on May 25, 2020.

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<sup>1</sup> Forty-five (45) days after July 13, 2022, is, technically, Saturday, August 27, 2022; by rule, the deadline is therefore extended until the next business day, which is Monday, August 29, 2022.

3. The Letter is critical of the Township of Union School District (District) and expresses the opinion that the District leadership has fallen short of addressing racial issues within the District.
4. The Letter calls for hiring more teachers of color, allowing all students to take advanced courses, implementation of a District-wide training on race bias, development of culturally responsive learning communities, and a District commitment to allow conversation on racism and discrimination. Respondents requested to meet with District leadership.
5. Respondents were members of the Board when the Letter was authored.
6. There were two other signatories to the Letter, Nellis Regis-Darby and Jeffrey Monge, who were not Board members as of the date of the Letter.
7. Three Respondents – Kim Ruiz, Guy Francis and Ronnie McDowell – are members of Parents for Change (PFC). Respondent Kalisha Morgan is not a member of PFC.
8. PFC is a volunteer grassroots initiative established by Union Township parents “To develop a community of parents and stakeholders in Union to support individuals, organizations, activities and programs to create positive change.” PFC works to promote an environment “where children can excel mentally, physically and emotionally in a safe, positive environment with a commitment to high quality programs and services.”
9. PFC is not a political organization; does not have any ties to a political party or accept donations for political candidates; does not own a bank account and does not provide monetary contributions to political candidates; and does support Board candidates who align with their mission through grassroots canvassing and social media posting.
10. The Letter was shared on PFC’s Facebook page on June 3, 2020, but it was not shared by any of the Respondents.
11. No reasonable person could conclude that the Letter was written on behalf of PFC. While three Respondents are members of PFC, the Letter was not written at the behest of PFC, nor was PFC involved in writing the Letter. PFC is not referenced or mentioned in the Letter.
12. The Letter was published as a “Letter to the Editor” on June 4, 2020, in “TAP into Union” by signee Jeffrey Monge, who was not a Board member at the time the Letter was published.
13. Respondents, in their Letter, do not hold themselves out as representing the Board and the Letter was not written using District resources or Board letterhead.

14. All five signatories in the Letter have children in the District. The Letter was issued by Respondents in their capacity as both parents and current and past Board members of color.
15. No reasonable person could conclude that the Letter was written on behalf of the Board, as it clearly mentions many deficiencies the authors see with the Board and District leadership.
16. The Letter did not contain any knowingly false statements or misstatements of objective fact.
17. The Letter did not disclose any confidential information related to Board policies, procedures, or practices.
18. The Letter could not be interpreted, reasonably, to be a personal attack on any school personnel or Board member. No school personnel, administrators, or Board members were identified in the Letter.
19. The Letter did not contain any personal promises that, by its nature, could compromise the Board.

*Id.* at 3-5.

Because the parties agreed that “no further hearing was required,” the matter, on remand, remains a motion for summary decision. *Id.* at 2 and 5.

According to ALJ Betancourt:

... the non-moving party presented no evidence. All that was presented was a letter brief, and the argument of counsel. The brief refers to the Complaint and sets forth that the facts therein are proven true. Nothing is further from reality. [Complainant] presented no facts, only argument. There was no certifications, no affidavits, nor any exhibits attached thereto. All that remains is the un rebutted certification of [Respondent] Ruiz.

*Id.* at 5.

Because “nothing presented by [Complainant]” rebuts Respondents’ motion, there remains no dispute as to material facts, and the matter remains ripe for summary decision. *Id.*

In his review, and because Complainant’s “continued reference to the Complaint ... does not constitute evidence” but rather “mere allegations,” and because “[t]here is no fact presented by [Complainant] to dispute any fact set forth in [Respondent] Ruiz’ [(sic)] Certification,” ALJ Betancourt “can only conclude that there were no violations as alleged in the Complaint.” *Id.* at 7-8. Consequently, ALJ Betancourt found that “[t]here are no material facts ... that suggest any Respondent” violated *N.J.S.A.* 18A:12-24.1(e), *N.J.S.A.* 18A:12-24.1(f), *N.J.S.A.* 18A:12-24.1(g), and/or *N.J.S.A.* 18A:12-24.1(i). *Id.* at 8-9.

Accordingly, ALJ Betancourt *ordered* that Respondents' motion for summary decision is granted, and the Complaint is dismissed, with prejudice. *Id.* at 9.

### III. Exceptions

#### *Complainant's Exceptions*

On July 27, 2022, Complainant filed Exceptions to ALJ Betancourt's "Findings of Fact," as follows:

- **Finding of Fact #9:** Complainant argues that, contrary to the ALJ's finding that PFC is "not a political organization," PFC's Facebook page notes, in part, that the PFC "raise[s] funds to support [its] candidates in their efforts to get elected." Furthermore, Complainant notes he has provided evidence disputing Respondent Ruiz's certification that the "images from the [PFC's] website are from 2016 and not accessible."
- **Finding of Fact #10:** Although the ALJ notes that the Letter "was not shared by Respondents," the fact that it was made available to the public through PFC's Facebook page, and was not shared by Respondents "through their personal [social media] account does not help Respondents' argument." Instead, "it suggests an organized, deliberate effort to put this message out through the medium of PFC." In addition, TAPinto Union included a detailed disclaimer when posting the Letter; however, PFC did not include any disclaimer. Complainant suggests PFC's lack of a disclaimer, along with TAPinto Union's publication of the Letter "almost an entire day later, would lead a reasonable person to conclude that the official, original source of the Letter was PFC."
- **Finding of Fact #11:** Complainant argues that a "reasonable person would conclude that the Letter was written on behalf [of] or at the behest of PFC." Complainant reiterates that PFC posted the Letter "in its entirety, without any editing, any amendment, any note, or any comment from PFC." Similar to the ALJ's conclusion that because the Letter was not written on Board letterhead, Respondents "did not hold themselves out as representing the [B]oard," it stands to reason that "the PFC Facebook banner serves the same function as a letterhead"; therefore, "The Court's reasoning in Facts #11 and #13 is inconsistent."
- **Finding of Fact #12:** Complainant argues that there "is no difference" between "sharing" on Facebook and "publishing" in TAPinto.net. Complainant further argues the Letter was published in TAPinto (June 4, 2020) shortly after it was published on the PFC's website.
- **Finding of Fact #13:** Complainant maintains, "The fact that the [L]etter is specifically addressed to entities other than the Board indicates that it purports to speak as the Board." Citing [\*I/M/O Christopher T. Treston\*](#), Complainant notes, "The Legislature and Courts are very aware of the confusion that may result from identifying oneself as a Board member while speaking in a private capacity."
- **Finding of Fact #14:** Complainant asserts that despite the ALJ's finding that the "five signatories" wrote the Letter as "both parents and current and past Board members of color," the title of the Letter does not state that they are writing as parents nor does it

contain any information within the body of the Letter to indicate that they are speaking as parents (and not in their official capacity as members of the Board).

- **Finding of Fact #15:** Complainant argues that the “most obvious assumption” based on the title of the Letter, is that it was written on behalf of the Board, and the ALJ’s finding to the contrary is “completely unfounded.” Furthermore, “a reasonable person could easily assume the ‘we’ referred to means the Board.”
- **Finding of Fact #18:** Complainant maintains that, although the Letter does not mention a specific administrator “by name,” it still references, “the administration’s lack of empathy” – a “human emotion which can only be experienced by an individual and cannot be ascribed to an entity such as an administration.”
- **Finding of Fact #19:** Complainant asserts Respondents’ “decision to write the [L]etter and publish it on PFC’s Facebook page constitutes private action.” Complainant further asserts Board member Williams stated that she was “offended” and “angry” in response to the Letter. Moreover, Complainant maintains “relying on and referring to one’s Board membership, yet failing to disclaim the speech is ... evidence of private action which could compromise the Board.”

### *Respondents’ Reply to Complainant’s Exceptions*

In addition to relying on the arguments set forth in their submissions to ALJ Betancourt, Respondents note that they submitted “a sworn certification of [Respondent Ruiz] attesting to the material facts in this case from her own first-hand knowledge.” Respondents further note “it was [C]omplainant’s burden, in opposing our motion, to introduce competent evidence to refute [Respondent] Ruiz’s assertions ... .” Respondents agree with ALJ Betancourt’s conclusion that Complainant did not provide the necessary evidence and, therefore, Respondent Ruiz’s “version of the facts stands un rebutted.” According to Respondents, Complainant’s exceptions do not “overcome[] this fatal defect in its case.” Respondents assert Complainant’s legal arguments in his exceptions “are merely a rehash of the positions advanced in the complaint,” have already been found to be “without merit,” and should be “rejected now.”

## **IV. Analysis**

When filing Exceptions, *N.J.A.C.* 1:1-18.4(b) requires a party to:

1. Specify the findings of fact, conclusions of law or dispositions to which exception is taken;
2. Set out specific findings of fact, conclusions of law or dispositions proposed in lieu of or in addition to those reached by the judge;
3. Set forth supporting reasons. Exceptions to factual findings shall describe the witnesses' testimony or documentary or other evidence relied upon. Exceptions to conclusions of law shall set forth the authorities relied upon.

Although Complainant disputed certain findings of fact, namely Finding of Fact #9 through #19, the Commission notes that Complainant did not take exception to the legal

conclusions set forth in ALJ Betancourt's *Initial Decision (On Remand)*. In addition, although the above-captioned matter was remanded by the Commission, it is noteworthy that despite his initial disagreement with the findings of fact set forth in ALJ Betancourt's *Initial Decision (Summary Decision)*, Complainant agreed, on remand, that an additional hearing(s) was not required; in this way, Complainant voluntarily deprived himself of the opportunity to prove why the findings of fact detailed in the *Initial Decision (Summary Decision)* were erroneous and should be modified or rejected.

With the above in mind, and following a thorough, careful, and independent review of the record, the Commission finds an insufficient basis upon which to modify or otherwise reject the findings of fact detailed in ALJ Betancourt's *Initial Decision (On Remand)*. Moreover, in the absence of sufficient credible evidence that the named Respondents (either individually or collectively) made personal promises or took action beyond the scope of their duties such that, by its nature, had the potential to compromise the Board; took action on behalf of, or at the request of, a special interest group or persons organized and voluntarily united in opinion and who adhere to a particular political party or cause; or evidence that Respondents used the schools in order to acquire some benefit for themselves, a member of their immediate family or a friend; took action to make public, reveal or disclose information that was not public under any laws, regulations or court orders of this State, or information that was otherwise confidential in accordance with board policies, procedures or practices, or took action to provide inaccurate information; and/or took deliberate action which resulted in undermining, opposing, compromising or harming school personnel in the proper performance of their duties, the record supports the findings of fact in ALJ Betancourt's *Initial Decision (On Remand)*, and also supports ALJ Betancourt's legal conclusion that Respondents did not violate *N.J.S.A. 18A:12-24.1(e)* (Count 1), *N.J.S.A. 18A:12-24.1(f)* (Count 2), *N.J.S.A. 18A:12-24.1(g)* (Count 3), and/or *N.J.S.A. 18A:12-24.1(i)* (Count 4).

## **V. Decision**

After review, the Commission adopts ALJ Betancourt's *Initial Decision (On Remand)* finding that Respondents did not violate *N.J.S.A. 18A:12-24.1(e)* (Count 1), *N.J.S.A. 18A:12-24.1(f)* (Count 2), *N.J.S.A. 18A:12-24.1(g)* (Count 3), and/or *N.J.S.A. 18A:12-24.1(i)* (Count 4), and adopts the decision to dismiss the above-captioned matter.

Accordingly, this is a final agency decision and is appealable only to the Superior Court-Appellate Division. *See, N.J.A.C. 6A:28-10.11* and *New Jersey Court Rule 2:2-3(a)*.

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Robert W. Bender, Chairperson

Mailing Date: September 14, 2022

***Resolution Adopting Final Decision  
in Connection with C35-20***

***Whereas***, on or about February 9, 2021, the above-captioned was transmitted to the Office of Administrative Law (OAL) for a plenary hearing to determine whether Respondents violated *N.J.S.A.* 18A:12-24.1(e) of the Code of Ethics for School Board Members (Code) in Count 1, violated *N.J.S.A.* 18A:12-24.1(f) of the Code in Count 2, violated *N.J.S.A.* 18A:12-24.1(g) of the Code in Count 3, and violated *N.J.S.A.* 18A:12-24.1(i) of the Code in Count 4; and

***Whereas***, on January 27, 2022, and following a hearing, the Honorable Thomas R. Betancourt, Administrative Law Judge (ALJ Betancourt) issued an *Initial Decision (Summary Decision)* detailing his findings of fact and legal conclusions; and

***Whereas***, on March 22, 2022, the Commission adopted a decision remanding the above-captioned matter for further action and consideration; and

***Whereas***, on July 13, 2022, ALJ Betancourt issued an *Initial Decision (On Remand)* again detailing his findings of fact and legal conclusions; and

***Whereas***, at its regularly scheduled meeting on August 23, 2022, the Commission reviewed and discussed the full record in the above-captioned matter, including the filed exceptions; and

***Whereas***, at its regularly scheduled meeting on August 23, 2022, the Commission discussed adopting ALJ Betancourt's findings of fact; adopting the legal conclusion that, based on the evidence presented, Respondents did not violate *N.J.S.A.* 18A:12-24.1(e) (Count 1), *N.J.S.A.* 18A:12-24.1(f) (Count 2), *N.J.S.A.* 18A:12-24.1(g) (Count 3), and/or *N.J.S.A.* 18A:12-24.1(i) (Count 4); and dismissing the above-captioned matter; and

***Whereas***, at a special meeting on September 14, 2022, the Commission reviewed and voted to approve the within decision as accurately memorializing its actions/findings from its regularly scheduled meeting on August 23, 2022; and

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

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Robert W. Bender, Chairperson

I hereby certify that this Resolution was duly adopted by the School Ethics Commission at a special meeting on September 14, 2022.

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