
**ELONDA CURRIE, THERESA
KELLY, LILLIAN E. WATERS,
STEPHEN BONNANI, STEVEN
MOORE & SHAY STEELE**

v.

**STEPHANIE DAVIES-KHAN,
SCOTT EVANS, &
ROCHELLE SALWAY
*ATLANTIC CITY
BOARD OF EDUCATION
ATLANTIC COUNTY***

**BEFORE THE SCHOOL
ETHICS COMMISSION**

Docket No. C30-06

**DECISION ON
MOTION TO DISMISS**

SHEILA A. THOMAS,

v.

**ROCHELLE SALWAY
*ATLANTIC CITY
BOARD OF EDUCATION
ATLANTIC COUNTY***

**BEFORE THE SCHOOL
ETHICS COMMISSION**

Docket No. C34-06

**DECISION ON
MOTION TO DISMISS**

**LANNIE ALMOND, ELONDA CURRIE,
EDNA HALL, PIERRE
HOLLINGSWORTH, STEVEN
MOORE, LINDA G. STEELE,
SHEILA A. THOMAS, LILLIAN E.
WATERS & STEVEN L. YOUNG**

v.

**ROCHELLE SALWAY
*ATLANTIC CITY
BOARD OF EDUCATION
ATLANTIC COUNTY***

**BEFORE THE SCHOOL
ETHICS COMMISSION**

Docket No. C37-06

**DECISION ON
MOTION TO DISMISS**

LANNIE ALMOND, JOHN DOLLARD, :
EDNA HALL, LINDA G. :
STEELE, LILLIAN E. :
WATERS & STEVEN L. YOUNG :

v. :

ROCHELLE SALWAY, STEPHANIE :
DAVIES-KAHN & SCOTT EVANS :
ATLANTIC CITY :
BOARD OF EDUCATION :
ATLANTIC COUNTY :

BEFORE THE SCHOOL
ETHICS COMMISSION

Docket No. C39-06

DECISION ON
MOTION TO DISMISS

PATRICIA TWEEDLE :

v. :

ROCHELLE SALWAY :
ATLANTIC CITY :
BOARD OF EDUCATION :
ATLANTIC COUNTY :

BEFORE THE SCHOOL
ETHICS COMMISSION

Docket No. C46-06

DECISION ON
MOTION TO DISMISS

PROCEDURAL HISTORY

This matter arises from complaints filed against Stephanie Davies-Kahn, Scott Evans and Rochelle Salway, members of the Atlantic City Board of Education (Board). The complaints were filed separately, but were consolidated on the basis of the allegations that were made. The first group of complaints, consolidated as C30-06, were filed on June 11, 2006 by Elonda Currie¹, Theresa Kelly, Lillian E. Waters², Stephen Bonanni, Steven Moore³ and Shay Steele alleging that the respondents violated the School Ethics Act (Act), N.J.S.A. 18A:12-21 et seq. The second complaint, C34-06, was filed on July 13, 2006 by Sheila A. Thomas alleging that respondent Rochelle Salway violated the Act. The third group of complaints, consolidated as C37-06, were filed on July 13, 2006 by Lannie Allmond, Elonda Currie, Edna Hall, Pierre Hollingsworth, Steven Moore, Linda G. Steele, Sheila A. Thomas, Lillian E. Waters, and Steven L. Young alleging that respondent Rochelle Salway violated the Act. The fourth group of complaints, consolidated as C39-06, were filed on July 13, 2006 by Lannie Allmond,

¹ Ms, Currie named only Scott Evans as a respondent.
² Ms. Waters named only Stephanie Davies-Kahn as a respondent.
³ Mr. Moore named only Scott Evans as a respondent.

John Dollard, Edna Hall, Linda G. Steele, Lillian E. Waters and Steven L. Young⁴ alleging that the respondents violated the Act. The fifth complaint, C46-06, was filed on July 13, 2006 by Patricia Tweedle alleging that respondent Rochelle Salway violated the Act. These five complaints were consolidated for a decision because they involved the same allegations regarding the same respondents. All of the complainants specifically allege that respondents violated N.J.S.A. 18A:12-24.1(f), (h) and (i) of the Code of Ethics for School Board Members when they failed to take their seats at the June 27, 2006 Board meeting causing a lack of a quorum. The complaints also allege that respondent Rochelle Salway was in the Board room at the June 27, 2006 Board meeting prior to the roll call and she left the room after Atlantic City Council President Craig Callaway told her to leave the room. Several complainants in C30-06⁵ and C39-06⁶ also alleged that the respondents violated N.J.S.A. 18A:12-24.1(b), (d) and (e) of the Code of Ethics for School Board Members for the same conduct.

Through their attorney, Jeffrey O. Casazza, Esquire and Chris Meikle, Esquire, the respondents denied the allegations, filed a motion to dismiss and asked the Commission to impose sanctions against the complainants pursuant to N.J.S.A. 18A:12-29(e). The Commission notified the complainants that it received the respondents' motion to dismiss and gave them 20 days to respond to the motion. The Commission did not receive a response to the motion to dismiss from the complainants.

The Commission considered the motion to dismiss at its January 23, 2006 meeting. During the public portion of the meeting, the Commission voted to grant the respondents' motion to dismiss all of the allegations against Mr. Evans and Ms. Davies-Khan. The Commission also voted to grant the respondents' motion to dismiss the complainants' allegations that Ms. Salway violated N.J.S.A. 18A:12-24.1(b), (d), (e), (h) and (i). However, the Commission voted to deny the respondents' motion to dismiss the complainants' allegation that Ms. Salway violated N.J.S.A. 18A:12-24.1(f).

FACTS

The Commission was able to discern the following facts based on the pleadings and the documents submitted. In considering a motion to dismiss, the Commission considers the facts in the light most favorable to the non-moving party.

All of the respondents are members of the Board. The Board has 12 members and seven members make a quorum. At the June 27, 2006 Board meeting, the respondents, Scott Evans and Stephanie Davies-Kahn, both stood in the main hallway outside the door of the Board room and did not take their seats when the meeting was called to order by the Board secretary. Respondent, Rochelle Salway, was in the Board room up at the dais prior to the roll call. Atlantic City Council President Craig Callaway told Ms. Salway to

⁴ Ms. Allmond, Ms. Hall, Mr. Evans, Ms. Waters and Mr. Young only named Scott Evans as a respondent.

⁵ Ms. Kelly, Stephen Bonanni and Shay Steele also allege that respondents violated N.J.S.A. 18A:12-24.1(b), (d) and (e) of the Code of Ethics for School Board Members.

⁶ Mr. Dollard also alleges that respondents violated N.J.S.A. 18A:12-24.1(b), (d) and (e) of the Code of Ethics for School Board Members.

leave the room. In response, Ms. Salway left the room before the roll call. There were six members of the Board present. After the roll call was taken, there was not a quorum. If the respondents had taken their seats at the meeting, there would have been a quorum. The meeting was cancelled for lack of a quorum. There were approximately 100 people in attendance at the meeting. Ms. Salway was quoted in a June 20, 2006, Press of Atlantic City article as saying, "...the nature of the divided board means that the group had to wait until all board members were present to keep from tipping the balance of the votes."

ANALYSIS

The Commission notes that, pursuant to N.J.S.A. 18A:12-29, the complainants bear the burden of factually proving any violations of the Code of Ethics for School Board Members. In considering a motion to dismiss, the Commission considers the facts in the light most favorable to the non-moving party.

The complainants first allege that the respondents violated N.J.S.A. 18A:12-24.1(b) of the Code of Ethics for School Board Members when, at the June 27, 2006 Board meeting, they did not take their seats at the meeting. N.J.S.A. 18A:12-24.1(b) provides:

I will make decisions in terms of the educational welfare of children and will seek to develop and maintain public schools that meet the individual needs of all children regardless of their ability, race, creed, sex, or social standing.

There is no information to suggest that the respondents' "decision" not to attend the June 27, 2006 Board meeting was not in terms of the educational welfare of children. While the Board was unable to conduct a meeting because the respondents did not take their seats at the Board meeting, there were other Board meetings after the June 27, 2006 Board meeting during which the Board was able to conduct business. In viewing the facts in the light most favorable to the complainants, the Commission can find no evidence to prove factually that the respondents failed to make decisions in terms of the educational welfare of children or failed to seek to develop and maintain public schools that meet the individual needs of all children regardless of their ability, race, creed, sex or social standing. Therefore, the Commission grants the respondents' motion to dismiss the complainants' allegation that the respondents violated N.J.S.A. 18A:12-24.1(a).

The complainants next allege that the respondents violated N.J.S.A. 18A:12-24.1(d) of the Code of Ethics for School Board Members when, at the June 27, 2006 Board meeting, they did not take their seats at the meeting. N.J.S.A. 18A:12-24.1(d) provides:

I will carry out my responsibility, not to administer the schools, but, together with my fellow board members, to see that they are well run.

To find a violation of N.J.S.A. 18A:12-24.1(d), the Commission must determine if the respondents' conduct rose to the level of administering the schools. The Commission has found a violation of N.J.S.A. 18A:12-24.1(d) when a board member has become involved in the running of the schools by interviewing and hiring staff or by directly supervising staff. See, I/M/O Julia Hankerson, C36-02 (June 24, 2003) and I/M/O William Lahn, C25-05 (December 20, 2005). In C36-02, the Commission found that a board member's conduct rose to the level of administering the schools when she interviewed and hired a teacher and a nurse without the superintendent's recommendation. The Commission found that the board member had attempted to subvert the superintendent. In C25-05, the Commission also found that a board member's conduct rose to the level of administering the schools, when the board member went directly to the guidance secretary and requested SAT reports, inspected the boys' lockers to determine if new lockers were needed and, in doing so, instructed district employees to provide more supervision when the students were present. The Commission reasoned that the board member administered the schools because he instructed district employees regarding their job duties. *Id.* pages 3-4. Here, the Commission can find no factual evidence to show that the respondents had become directly involved in activities or functions that are the responsibility of school personnel. The respondents' failure to take their seats at the June 27, 2006 Board meeting does not rise to the level of administering the schools. In viewing the facts in the light most favorable to the complainants, the Commission can find no evidence to prove factually that the respondents administered the schools. Therefore, the Commission grants the respondents' motion to dismiss the complainants' allegation that the respondents violated N.J.S.A. 18A:12-24.1(d).

The complainants further allege that the respondents violated N.J.S.A. 18A:12-24.1(e) of the Code of Ethics for School Board Members when, at the June 27, 2006 Board meeting, they did not take their seats at the meeting. N.J.S.A. 18A:12-24.1(e) provides:

I will recognize that authority rests with the board of education and will make no personal promises nor take any private action that may compromise the board.

In order to find a violation of N.J.S.A. 18A:12-24.1(e), the Commission must first determine if the respondents failed to recognize that authority rests with the Board. A board member's failure to attend a meeting of the board does not prove that the board member failed to recognize that authority rests with the board. Here, there was no proof that the respondents were acting on behalf the board or as representatives of the board. When the respondents chose not to attend the June 27, 2006 board meeting, which was thereby cancelled due to lack of a quorum, the respondents recognized that authority rested with the board and they chose to delay the meeting until a later date.

The Commission must next determine if the respondents took private action that may compromise the Board. A board member's decision to attend or not attend a Board

meeting is taken in her or his role as a Board member. Therefore, the respondents' decision not to attend the June 27, 2006 Board meeting was not a private action. In viewing the facts in the light most favorable to the complainants, the Commission can find no evidence to prove factually that the respondents failed to recognize that authority rests with the Board or that they took a private action that may compromise the Board. Therefore, the Commission grants the respondents' motion to dismiss the complainants' allegation that the respondents violated N.J.S.A. 18A:12-24.1(e).

The complainants also allege that the respondents violated N.J.S.A. 18A:12-24.1(f) of the Code of Ethics for School Board Members when, at the June 27, 2006 Board meeting, they did not take their seats at the meeting. N.J.S.A. 18A:12-24.1(f) provides:

I will refuse to surrender my independent judgment to special interest or partisan political groups or to use the schools for personal gain or for the gain of friends.

To prove a violation of N.J.S.A. 18A:12-24.1(f), complainants allege that Mr. Evans and Ms. Davies-Khan surrendered their independent judgment to special interest or partisan political groups when they did not take their seats at the June 27, 2006 Board meeting. The Commission can find no factual evidence to show that Mr. Evans and Ms. Davies-Khan did not take their seats due to the influence of some special interest or partisan political group. They were both standing in the hall and chose not to take their seats for the meeting. This evidence alone, absent additional evidence to show the involvement of a special interest or partisan political group, fails to prove a violation of N.J.S.A. 18A:12-24.1(f). In viewing the facts in the light most favorable to the complainants, the Commission can find no evidence to prove factually that Mr. Evans or Ms. Davies-Khan surrendered their independent judgment to special interest or partisan political groups or used the schools for personal gain or for the gain of friends when they did not take their seats at the June 27, 2006 meeting of the Board. Therefore, the Commission grants the respondents' motion to dismiss the complainants' allegation that Mr. Evans and Ms. Davies-Khan violated N.J.S.A. 18A:12-24.1(f).

The Commission now turns to Ms. Salway. The complainant has offered evidence that Ms. Salway was on the dais prior to the Board meeting being called to order. Many of the complainants certified that they heard Atlantic City Council President Craig Callaway tell Ms. Salway to leave the room. After Mr. Callaway told her to leave the room, Ms. Salway left the room. When she left the room, it was prior to the roll call; thus, causing a lack of quorum and cancellation of the meeting. Ms. Salway was quoted after the meeting as saying, "...the nature of the divided board means that the group had to wait until all board member were present to keep from tipping the balance of the votes." Based on this evidence, the Commission cannot grant the respondents' motion to dismiss this allegation against Ms. Salway. As a fact-finding body in complaints alleging solely a violation of the Code of Ethics, the Commission will review the respondent's answer and take testimony prior to the rendering of a decision as to whether Ms. Salway violated N.J.S.A. 18A:12-24.1(f). Therefore, the Commission denies the respondents'

motion to dismiss the allegation that Ms. Salway violated N.J.S.A. 18A:12-24.1(f) when she left the Board room at the June 27, 2006 meeting upon the suggestion of Ms. Callaway.

The complainants next allege that the respondents violated N.J.S.A. 18A:12-24.1(h) of the Code of Ethics for School Board Members when, at the June 27, 2006 Board meeting, they did not take their seats at the meeting. N.J.S.A. 18A:12-24.1(h) provides:

I will vote to appoint the best qualified personnel available after consideration of the recommendation of the chief school administrator.

To prove a violation of N.J.S.A. 18A:12-24.1(h), the complainant alleges that when the respondents failed to take their seat at the June 27, 2006 Board meeting, which caused the meeting to be cancelled for lack of a quorum, they prevented the appointment of the best qualified personnel available after consideration of the recommendation of the chief school administrator. However, the complainant does not offer any factual evidence to show that the agenda items were not considered at another meeting of the Board. The Commission notes that it is the usual practice of boards of education to either reschedule cancelled meetings for consideration of the agenda, or place the agenda items of a cancelled meeting on another agenda of another Board meeting. The Commission also notes that the complainant did not provide a copy of the agenda for the June 27, 2006 meeting of the Board showing the personnel items that were on it.

In viewing the facts in the light most favorable to the complainant, the Commission can find no evidence to factually prove that respondents failed to vote to appoint the best qualified personnel available after consideration of the recommendation of the chief school administrator. Therefore, the Commission grants the respondents' motion to dismiss complainants' allegation that respondents violated N.J.S.A. 18A:12-24.1(h).

Finally, the complainants allege that the respondents violated N.J.S.A. 18A:12-24.1(i) of the Code of Ethics for School Board Members when, at the June 27, 2006 Board meeting, they did not take their seats at the meeting. N.J.S.A. 18A:12-24.1(i) provides:

I will support and protect school personnel in proper performance of their duties.

To prove a violation of N.J.S.A. 18A:12-24.1(i), the complainants allege that when the respondents failed to take their seat at the June 27, 2006 Board meeting, which caused the meeting to be cancelled for lack of a quorum, they failed to support and protect school personnel in proper performance of their duties. A cancelled Board meeting does not prove that school personnel were not protected in the proper performance of their duties. The Commission notes that this Board is not the only board of education to cancel board meetings.

In viewing the facts in the light most favorable to the complainant, the Commission can find no evidence to factually prove that respondents failed to support and protect school personnel in proper performance of their duties. Therefore, the Commission grants the respondents' motion to dismiss complainants' allegation that respondents violated N.J.S.A. 18A:12-24.1(i).

DECISION DENYING MOTION TO DISMISS

For the reasons expressed above, the Commission does not grant the respondents' motion to dismiss the complainants' allegation that Ms. Salway violated N.J.S.A. 18A:12-24.1(f). This is not a final decision of an administrative agency. In accordance with N.J.S.A. 18A:12-29(b) of the School Ethics Act, Ms. Salway is directed to file with the Commission a written statement under oath within 20 days of receipt of this decision responding to the allegation and setting forth her position regarding the alleged ethical violation. Pursuant to N.J.A.C. 6A:28-6.4(c), the response must respond directly to each allegation set forth in the complaint with substantive reasons why the allegations are false. After receipt of the response, the Commission will notify all parties as to when the matter will be scheduled for a hearing.

DECISION GRANTING MOTION TO DISMISS

For the reasons expressed above, the Commission grants the respondent's motion to dismiss all of the allegations against Mr. Evans and Ms. Davies-Khan. The Commission also grants the respondents' motion to dismiss the complainants' allegations that Ms. Salway violated N.J.S.A. 18A:12-24.1(b), (d), (e), (h) and (i). The Commission, however, denies the motion with respect to the allegation that Ms. Salway violated N.J.S.A. 18A:12-24.1(f). Since the Commission has denied, in part, the motion to dismiss it will not address the respondent's request for sanctions.

This decision to grant the motion to dismiss is a final decision of an administrative agency. A separate decision will issue on Ms. Salway after a hearing on violation of the Code of Ethics. Therefore, it is appealable only to the Superior Court--Appellate Division. See, New Jersey Court Rule 2:2-3(a).

Paul C. Garbarini
Chairperson

Resolution Adopting Decision – C30-06, C34-06, C37-06, C39-06 & C46-06

Whereas, the School Ethics Commission has considered the pleadings and the motion to dismiss filed by the parties and the documents submitted in support thereof; and

Whereas, the Commission granted the respondent's motion to dismiss the allegations against Scott Evans and Stephnie Davies-Khan; and

Whereas, the Commission granted the respondent's motion to dismiss the allegations that Rochelle Salway violated N.J.S.A. 18A:12-24.1(b), (d), (e), (h) and (i); and

Whereas, the Commission denied the respondent's motion to dismiss the allegations that Rochelle Salway violated N.J.S.A. 18A:12-24.1(f); and

Whereas, the Commission has reviewed the proposed decision of its staff; and

Whereas, the Commission agrees with the proposed decision;

Now Therefore Be It Resolved that the Commission hereby adopts the proposed decision granting the respondent's motion to dismiss the allegations against Scott Evans and Stephanie Davies-Khan and the allegations that Rochelle Salway violated N.J.S.A. 18A:12-24.1(b), (d), (e), (h) and (i) and denying the respondents' motion to dismiss the allegation that Rochelle Salway violated N.J.S.A. 18A:12-24.1(f) as its final decision on the respondents' motion to dismiss and directs its staff to notify all parties to this action of the Commission's decision herein.

Paul C. Garbarini, Chairperson

I hereby certify that the Resolution was duly adopted by the School Ethics Commission at its public meeting on February 27, 2007.*

Lisa James-Beavers
Executive Director
PCG/LJB/MET/ethics/decisions/C19, 20 & 23-06

*Commissioners Rosalind Frisch and Maragarita Roig voted against granting the motion to dismiss.