

<b>TIMOTHY MANCUSO, CHRISTINE</b>	:	
<b>YOUNG, DENISE CASH, ROBIN</b>	:	<b>BEFORE THE SCHOOL</b>
<b>SALAAM &amp; ELONDA CURRIE</b>	:	<b>ETHICS COMMISSION</b>
	:	
<b>v.</b>	:	
	:	<b>Docket No. C21-06</b>
<b>DOLORES CALLAWAY, STEPHANIE</b>	:	
<b>DAVIES-KHAN, SCOTT EVANS,</b>	:	
<b>SOPHIA LaPORTE, ROCHELLE</b>	:	<b>DECISION</b>
<b>SALWAY &amp; PAMELA JONES</b>	:	
<b>ATLANTIC CITY</b>	:	
<b>BOARD OF EDUCATION</b>	:	
<b>ATLANTIC COUNTY</b>	:	

**PROCEDURAL HISTORY**

This matter arises from a complaint filed on June 16, 2006, by Timothy Mancuso, Christine Young, Denise Cash, Robin Salaam and Elonda Currie alleging that Dolores Callaway, Stephanie Davies-Kahn, Scott Evans, Sophia LaPorte, Rochelle Salway and Pamela Jones, all members of the Atlantic City Board of Education (Board), violated the School Ethics Act (Act), N.J.S.A. 18A:12-21 et seq. Complainants specifically allege that respondents violated N.J.S.A. 18A:12-24.1(f) and (h) of the Code of Ethics for School Board Members when they targeted five teachers and voted against their summer school employment.

The Commission granted the respondents an extension of time to file an answer for good cause. Through their attorneys, Jeffrey O. Casazza, Esquire, and Chris Meikle, Esquire, the respondents filed an answer wherein they denied that they failed to vote to appoint the best qualified personnel available after consideration of the recommendation of the chief administrative officer and denied surrendering their independent judgment to special interest or partisan political groups or using the schools for personal gain or for the gain of friends. The respondents also asked the Commission to impose sanctions against the complainants pursuant to N.J.S.A. 18A:12-29(e).

The Commission invited the parties to attend its November 28, 2006 meeting, but did not require that they attend. It reminded them that they had the burden of proving factually any violations of the Code of Ethics for School Board Members. The complainants did not attend the meeting. The respondents Dolores Callaway, Stephanie Davies-Kahn, Scott Evans, Sophia LaPorte and Rochelle Salway attended the meeting with their attorneys Mr. Casazza and Mr. Meikle. This complaint was consolidated with C19-06, C20-06, C22-06, C23-06, C24-06, C25-06, C26-06, C29-06<sup>1</sup> and C32-06 for a hearing because it involved the same respondents and similar issues regarding personnel decisions. The complainant in C29-06 and her two witnesses testified before the

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<sup>1</sup> Scott Evans was not include as a respondent in C29-06.

Commission. At the end of the testimony, the respondents' attorney made a motion to dismiss this complaint and the above listed complaints. After deliberation, the Commission voted to grant the respondents' motion to dismiss all of the complaints. At its December 19, 2006 meeting, the Commission voted to find that this complaint and the above listed complaints were not frivolous and adopted this decision.

## **FACTS**

The Commission was able to discern the following facts based on the pleadings and the documents submitted.

All of the respondents are members of the Board. The complainants allege that the respondents targeted five teachers who did not agree with Atlantic City Council President Craig Callaway and voted against their summer school employment. One of the teachers was a Teacher of the Year and another had been Teacher of the Year in a previous year. Two of the teachers had been trained in Leveled Literacy Intervention. In past years, all five teachers were appointed to summer school positions. The complainants also allege that the respondents highlighted the names of the five teachers on the summer school personnel list prior to the meeting.

## **ANALYSIS**

The Commission notes that, pursuant to N.J.S.A. 18A:12-29, the complainant bears 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 allege that the respondents violated N.J.S.A. 18A:12-24.1(f) of the Code of Ethics for School Board Members when they voted against the appointment of five teachers to summer school positions. 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 the respondents surrendered their independent judgment to Atlantic City Council President Craig Callaway when they voted against the appointment of five teachers to summer school positions. The complainants' only factual proof to substantiate a violation of N.J.S.A. 18A:12-24.1(f) is that the respondents highlighted the names of the five teachers on the summer school personnel list prior to the meeting. The Commission can find no factual evidence to connect the highlighted names to the respondents' surrendering of their independent judgment to Atlantic City Council President Craig Callaway. The highlighting of names on a list in a Board agenda absent any other evidence is insufficient 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 complainant, the Commission can find no evidence to factually prove that the respondents surrendered their independent judgment to special interest or partisan political groups or used the schools for personal gain or for the gain of friends. Therefore, the Commission grants the respondents' motion to dismiss the complainants' allegation that respondents violated N.J.S.A. 18A:12-24.1(f).

The complainants also allege that the respondents violated N.J.S.A. 18A:12-24.1(h) of the Code of Ethics for School Board Members when they voted against the appointment of five teachers to summer school positions. 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 complainants allege that the actions of the respondents were arbitrary and capricious. The complainants also allege that one of the teachers who was not appointed was a Teacher of the Year, another had been Teacher of the Year in a previous year and two of the teachers had been trained in Leveled Literacy Intervention. While the teachers who were not appointed appear qualified, N.J.S.A. 18A:12-24.1(h) does not require the Board to accept all recommendations of the chief administrative officer; it only requires that the Board consider the recommendations. See, Fitzpatrick v. Central Regional Board of Education Members, C35-02 (February 25, 2003). The fact that the respondents had highlighted the teachers' names shows that the respondents considered the recommendation of the chief administrative officer. The Commission cannot find that the respondents failed to appoint the best qualified personnel based on the information before it.

In viewing the facts in the light most favorable to the complainants, 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).

## **DECISION**

For the reasons expressed above, the Commission grants the respondents' motion to dismiss the complaint.

## **REQUEST FOR SANCTIONS**

At its December 19, 2006 meeting, the Commission considered the respondents' request that the Commission find that the complaint was frivolous and impose sanctions pursuant to N.J.S.A. 18A:12-29(e). In order to find that a complaint, counterclaim, cross-

claim or defense of the nonprevailing party was frivolous, the Commission must find on the basis of the pleadings, discovery, or the evidence presented that either:

1) The complaint...was commenced, used or continued in bad faith, solely for the purpose of harassment, delay or malicious injury; or

2) The nonprevailing party knew, or should have known, that the complaint...was without any reasonable basis in law or equity and could not be supported by a good faith argument for an extension, modification or reversal of existing law. [N.J.S.A. 2A:15-59.1]

The respondents do not provide any specific argument as to why the Commission should find that this complaint was frivolous. The Commission can find no evidence to show that the complainants filed the complaint in bad faith solely for the purpose of harassment, delay or malicious injury. The Commission also has no information to suggest that the complainants should have known that the complaint was without any reasonable basis in law or equity or that it could not be supported by a good faith argument for an extension, modification or reversal of existing law. For the foregoing reasons, the Commission finds that this complaint was not frivolous and denies the respondents' request for sanctions against the complainants.

This decision is a final decision of an administrative agency. 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 – C21-06**

**Whereas**, the School Ethics Commission has considered the pleadings and the response filed by the parties and the documents submitted in support thereof; and

**Whereas**, the Commission granted the respondent's motion to dismiss the complaint; and

**Whereas**, the Commission has reviewed the proposed decision of its staff dismissing the complaint; 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 as its final decision in this matter and directs its staff to notify all parties to this action of the Commission's decision herein.

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Paul C. Garbarini, Chairperson

I hereby certify that the Resolution was duly adopted by the School Ethics Commission at its public meeting on December 19, 2006.\*

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Lisa James-Beavers  
Executive Director

PCG/LJB/MET/ethics/decisions/C21-06

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