

INEZ P. DURHAM, et al.,	:	BEFORE THE SCHOOL
	:	ETHICS COMMISSION
v.	:	
	:	
SHARON ROBINSON BRIGGS	:	Docket No. C23-05
PLAINFIELD	:	
BOARD OF EDUCATION	:	DECISION
UNION COUNTY	:	
	:	

PROCEDURAL HISTORY

This matter arises from a complaint filed on May 10, 2005 by Inez P. Durham, Dorothy Henry and Margaret Lewis alleging that Sharon Robinson Briggs, President of the Plainfield Board of Education (Board), violated the School Ethics Act (Act), N.J.S.A. 18A:12-21 *et seq.* On July 15, 2005, the complainants submitted an amended complaint that included the specific provisions of the Act that the complainants believe were violated. Complainants specifically allege that respondent violated N.J.S.A. 18A:12-22(a) and (b) of the Act and N.J.S.A. 18A:12-24.1(a) and (e) of the Code of Ethics for School Board Members when, during the privilege of the floor portion of the March 18, 2005 Board meeting, respondent interrupted a former Board member and a sitting Board member who were attempting to speak and then left her seat at the Board table to unplug the microphone. As requested by complainants, a copy of the audiotape of the March 18, 2005 Board meeting was obtained by the Commission; however, it was not considered by the Commission when it rendered this decision.

On August 4, 2005, through her attorney, Brian J. Aloia, Esquire, the respondent filed a motion to dismiss in lieu of an answer. In the motion to dismiss, Mr. Aloia argued that N.J.S.A. 18A:12-22 cannot be violated since it is the provision establishing the Legislature’s findings and declarations and the complainant’s allegations that respondent violated N.J.S.A. 18A:12-22 must be dismissed. Mr. Aloia also argued that the complainant’s allegation that respondent violated N.J.S.A. 18A:12-24.1(a) must be dismissed because the Open Public Meetings Act (OPMA), N.J.S.A. 10:4-6 *et seq.*, does not provide the public with the right to participate in Board meetings. Mr. Aloia further argued that N.J.S.A. 18A:12-24.1(e) must be dismissed because all of the actions taken by the respondent were taken in her role as President of the Board. Finally, Mr. Aloia argued that because the two members of the public had violated N.J.S.A. 2C:33-8, this complaint must be dismissed. Mr. Aloia asked the Commission to impose a fine of \$500 on each complainant for filing a frivolous complaint.

On September 2, 2005, the complainants filed an answer to the motion to dismiss wherein they maintained that, by her conduct and verbal statements, the respondent violated N.J.S.A. 18A:12-22. They also argued that, because the respondent did not follow Board policy by letting some members of the public speak for more than the allotted five minutes and interrupting two members of the public who spoke longer than five minutes, she caused a disturbance in the meeting. They further argued that the

respondent caused a disturbance in the meeting when she got up from her seat to turn off the microphones.

The Commission considered the complaint, motion to dismiss and response to the motion to dismiss at its September 27, 2005 meeting. During the public portion of the meeting, the Commission granted the motion to dismiss the complaint. The Commission also voted to find that the complaint was not frivolous.

FACTS

The Commission was able to discern the following facts based on the pleadings and the documents submitted. In considering whether to grant a motion to dismiss, the Commission reviews the facts in the light most favorable to the complainant.

At all times relevant to the allegations in this complaint, the respondent was President of the Board. However, currently she is not the Board President, but she is still a member of the Board. The complainants are community members who volunteer in the school, serve on district committees and regularly attend Board meetings.

On March 18, 2005 the Board held a public business meeting. Board bylaw 9322, in the "Business Meetings" section, provides:

At the business meetings, privilege of the floor will be provided for sixty minutes to public comment prior to committee reports. Members of the public in attendance will have an opportunity to raise concerns during this period of the meeting. Members of the public may speak once for a maximum period of five-minutes by the clock; this time is nontransferable by one individual to another. Extension of the five-minutes time limit will be granted only upon a majority vote of the board members present.

Board bylaw 9325.4, in the "Meeting Conduct" section, provides that the Board shall be bound by the OPMA. It also provides the following:

In order to hear the views of the public, the board shall provide a period of public participation in each of its regular and special meetings, but the board reserves the right to establish rules for the conduct of such public meetings.

During the privilege of the floor portion of the March 18, 2005 business meeting of the Board, the first speaker was allowed to speak for twenty minutes uninterrupted. Other speakers were allowed to speak without interruption from the respondent. Respondent apologized to the public for letting the speakers continue beyond the five minutes. When a former member of the Board was speaking during the privilege of the floor portion of the meeting, the respondent interrupted his comments. He certified that respondent cut him off when he spoke of his concerns of the trend of the majority of the

Board to be influenced by an outside political force. Also during the privilege of the floor portion of the March 18, 2005 meeting, Beulah M. Womack, who was a 25-year Board member attending her last Board meeting, went to the microphone to speak in order to thank the public for their trust and confidence and to share with the public some of her personal achievements. However, the respondent told Ms. Womack that she could not speak. The respondent shouted down Ms. Womack, got up from her seat, called for security and turned off the microphone. Ms. Womack certified that during her 25-year tenure on the Board, during some of which she served as President of the Board, board members had spoken during the privilege of the floor portion of the meeting.

ANALYSIS

The Commission will initially address the complainants' allegation that the respondent's conduct during the March 18, 2005 Board meeting violated N.J.S.A. 18A:12-22(a) and (b). As Mr. Aloia correctly noted in his motion to dismiss, N.J.S.A. 18A:12-22(a) and (b) sets forth the Legislature's findings and declarations. This section of the Act does not set forth rules or standards for school board members to follow, nor does it define the ethical obligations of school board members. This section of the Act cannot be violated by Board members. Therefore, the Commission grants the respondent's motion to dismiss the allegation that respondent violated N.J.S.A. 18A:12-22(a) and (b) of the Act.

The Commission notes that, pursuant to N.J.S.A. 18A:12-29, the complainants bear the burden of proving factually any violations of the Code of Ethics for School Board Members. Complainants allege that the respondent violated N.J.S.A. 18A:12-24.1(a) and (e) of the Code of Ethics for School Board Members when, during the privilege of the floor portion of the March 18, 2005 Board meeting, respondent interrupted a former Board member and a sitting Board member who were attempting to speak and then left her seat at the Board table to unplug the microphone.

N.J.S.A. 18A:12-24.1(a) provides:

I will uphold and enforce all laws, rules and regulations of the State Board of Education and court orders pertaining to the schools. Desired changes shall be brought about only through legal and ethical procedures.

To prove a violation of N.J.S.A. 18A:12-24.1(a), complainants maintain that, by her conduct, the respondent violated both the OPMA and Board bylaw 9322 and thus, respondent did not uphold and enforce all laws, rules and regulations of the State Board of Education. Even if the Commission had jurisdiction to determine if the OPMA was violated, it notes that the OPMA does not provide the public with the right to participate in public meetings. Furthermore, N.J.S.A. 10:4-12 provides that "Nothing in this act shall be construed to limit the discretion of a public body to permit, prohibit or regulate the active participation of the public as any meeting..." Thus, the respondent's conduct at the March 18, 2005 Board meeting does not appear to have violated the OPMA. The

Commission does not have jurisdiction to enforce Board bylaws or policy. It is within the discretion of the Board to enforce their bylaws or policies. The Commission can find no evidence that the respondent failed to uphold and enforce all laws, rules and regulations of the State Board of Education and court orders pertaining to the schools. Based on the foregoing, the Commission grants the respondent's motion to dismiss complainant's allegation that respondent's conduct at the March 18, 2005 Board meeting violated N.J.S.A. 18A:12-24.1(a).

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.

To prove a violation of N.J.S.A. 18A:12-24.1(e), the complainants maintain that the respondent took private action when she left her seat to unplug the microphone and that private action created a disturbance at the March 18, 2005 Board meeting. The Commission cannot understand how the respondent's conduct was a private action. As President of the Board, respondent was coordinating the meeting. In her role as President of the Board, the respondent was attempting to control the privilege of the floor portion of the meeting. Respondent's actions were taken in her role as President of the Board. Therefore, she did not take any private action. Based on the foregoing, the Commission grants the respondent's motion to dismiss complainant's allegation that respondent's conduct at the March 18, 2005 Board meeting violated N.J.S.A. 18A:12-24.1(e).

DECISION

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

REQUEST FOR SANCTIONS

Respondent has asked 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 Commission can find no evidence that the complaint was filed in bad faith solely for the purpose of harassment, delay or malicious injury. Further, based on the pleadings, it is clear that the complainants believed that the respondent's failure to abide by the Board's adopted policies and procedures was a violation of the OPMA and the Act. Thus, they believed that there was a reasonable basis in law for the complaint. For the foregoing reasons, the Commission finds that the complaint was not frivolous and denies the respondent's request for sanctions against the complainant.

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 – C23-05

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 grants 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 to grant 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.

Paul C. Garbarini, Chairperson

I hereby certify that the Resolution
was duly adopted by the School
Ethics Commission at its public meeting
on October 25, 2005.

Lisa James-Beavers
Executive Director

PCG/LJB/MET/ethics/decisions/C23-05