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GABRIELLE M. CALDWELL	:	BEFORE THE SCHOOL
	:	ETHICS COMMISSION
v.	:	
	:	
DOLORES CALLAWAY, STEPHANIE	:	
DAVIES-KHAN, SOPHIA	:	Docket No. C29-06
LaPORTE, ROCHELLE	:	
SALWAY & PAMELA JONES	:	
ATLANTIC CITY	:	DECISION
BOARD OF EDUCATION	:	
ATLANTIC COUNTY	:	
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PROCEDURAL HISTORY

This matter arises from a complaint filed on June 25, 2006, by Gabrielle M. Caldwell alleging that Dolores Callaway, Stephanie Davies-Kahn, Sophia LaPorte, Rochelle Salway and Pamela Jones, members of the Atlantic City Board of Education (Board), violated the School Ethics Act (Act), N.J.S.A. 18A:12-21 et seq. Complainant specifically alleges 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 her and did not approve her promotion to principal.

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 the complainant that she had the burden of proving factually any violations of the Code of Ethics for School Board Members. The complainant attended the meeting and testified. The complainant's witnesses, Superintendent, Fred Nickles and Assistant Superintendent for Human Resources, Dr. Thomas Kirshling also testified. 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, C21-06, C22-06, C23-06, C24-06, C25-06, C26-06 and C32-06 for a hearing because it involved the same respondents, except for Scott Evans, and similar issues regarding personnel decisions. At the end of the testimony, the respondents' attorney made a motion to dismiss this complaint and the above listed complaints. The complainant responded to the motion to dismiss by asking the Commission if she could give the Commission additional information. After deliberation, the Commission voted

to grant the respondents' motion to dismiss all of the complaints. However, the Commission allowed the complainant to provide additional information, which it would consider at the December 19, 2006 meeting. The complainant did not provide any additional information for the Commission to review. 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, testimony and the documents submitted.

All of the respondents are members of the Board. The complainant worked in the District as a teacher for eight years and for the past seven years she worked in the District as Vice-Principal. Complainant was the 1999 Teacher of the Year. During her tenure as Vice Principal, the school where she worked achieved the Benchmark School for the 2003-2004, 2004-2005 and 2005-2006 school years. That school also achieved the National Title One Distinguished School and the Governor's School of Excellence awards. Mr. Nickels has served as Superintendent in the District for six years and prior to that he was superintendent of Egg Harbor Township for 18 years. Dr. Kirshling has worked in the District for six years and he attends almost all of the Board meetings.

At the March 28, 2006, Board meeting, the complainant was recommended by the superintendent to be promoted to the position of principal. The respondents voted not to promote the complainant to the position of principal. Prior to the meeting, the complainant was contacted by another vice-principal who told complainant that she had been contacted by Atlantic City Council President, Craig Callaway, who told the vice-principal that she should go to the March 28, 2006 meeting to denounce the superintendent. Also prior to the meeting, respondent, Rochelle Salway, told the complainant that she should become principal, but then voted not to promote the complainant to the position of principal. At the March 28, 2006 meeting, the brother of the Atlantic City Council President, Craig Callaway, was in the audience giving hand signals to the respondents when certain matters came up and he was passing notes to respondent, Stephanie Davies-Kahn. Complainant alleges that the respondents' action were political retaliation because complainant's sister did not support the hiring of the nephew of Mr. Callaway. Complainant also alleges that she was verbally harassed by Ms. Davies-Kahn.

Mr. Nickels testified that the District had two vacancies for principal and received six to eight applications for the principal positions. Mr. Nickels along with Dr. Kirshling and the Assistant Principal for Curriculum and Instruction interviewed all of the applicants and, through the Board's Personnel Committee, recommended complainant for one of the principal positions. He also testified that the brother of Mr. Callaway was in the audience giving signals allegedly informing the Board how to vote. He further testified that prior to the meeting, he saw that the respondents had names highlighted on the agenda and voted no on all of the highlighted names. He testified that complainant's

name was not highlighted. He also testified that Mr. Callaway went up to the dais on the side and talked to respondent, Stephanie Davies-Kahn, but that he did not hear the conversation. He testified that there were times when Mr. Callaway has asked for Board meetings to stop so he could talk to the respondents.

Dr. Kirshling testified that, at the March 28, 2006 Board meeting, he saw Mr. Callaway making hand signals to the Board. He also saw that the respondents had their agendas and had a conversation with Mr. Callaway, but he did not hear the conversation.

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 complainant alleges 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 promoting her to the position of principal. 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), complainant alleges that the respondents surrendered their independent judgment to Atlantic City Council President Craig Callaway when they voted against promoting her to principal at the March 28, 2006 Board meeting. The complainant argues that Mr. Callaway's brother was in the audience during the March 28, 2006 Board meeting giving hand signals to the respondents indicating how they should vote and he was passing notes to respondent, Stephanie Davies-Kahn. Complainant then argues that the respondents voted against her promotion to principal because her sister did not support the hiring of the nephew of Craig Callaway. The Commission can find no factual evidence to show that Mr. Callaway's brother signaled the respondents to vote against the complainant because complainant's sister did not support the hiring of Mr. Callaway's nephew. There is no factual evidence to show that Mr. Callaway's brother's hand signals were directed by Mr. Callaway or that the hand signals were given when complainant's appointment was being voted upon.

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 complainant's allegation that respondents violated N.J.S.A. 18A:12-24.1(f).

The complainant also alleges 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 promoting her to the position of principal. 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 the actions of the respondents were arbitrary and capricious. The Commission notes that the complainant worked in the District as a teacher for eight years and for the past seven years worked as Vice-Principal. The complainant was also the 1999 Teacher of the Year. The Commission also notes that during her tenure as Vice Principal, the school where she worked achieved the Benchmark School for the 2003-2004, 2004-2005 and 2005-2006 school years. That school also achieved the National Title One Distinguished School and the Governor's School of Excellence awards. While respondent appears to be highly qualified for the position of principal, the Commission notes that 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 Commission cannot find that the respondents failed to consider the recommendation of the chief administrative officer.

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 complainant's 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 is frivolous. The Commission can find no evidence to show that the complainant 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 complainant 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 is not frivolous and denies the respondents' 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 – C29-06

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.

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.*

Lisa James-Beavers
Executive Director

PCG/LJB/MET/ethics/decisions/C29-06

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