

PATRICIA TWEEDLE	:	BEFORE THE SCHOOL
	:	ETHICS COMMISSION
v.	:	
	:	Docket No. C33-06
STEPHANIE DAVIES-KHAN	:	
<i>ATLANTIC CITY</i>	:	DECISION
<i>BOARD OF EDUCATION</i>	:	
<i>ATLANTIC COUNTY</i>	:	

PROCEDURAL HISTORY

This matter arises from a complaint filed on July 13, 2006, by Patricia Tweedle alleging that Stephanie Davies-Kahn, a member 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 respondent violated N.J.S.A. 18A:12-24.1(f), (h) and (i) of the Code of Ethics for School Board Members when, at the June 27, 2006 Board meeting, she stood in the hallway outside the door of the Board room and did not take her seat at the meeting.

Through her attorney, Jeffrey O. Casazza, Esquire, the respondent filed a motion to dismiss and asked the Commission to impose sanctions against the complainant pursuant to N.J.S.A. 18A:12-29(e). The Commission notified the complainant that it received the respondent’s motion to dismiss and gave her 20 days to respond to the motion. The Commission did not receive a response to the motion to dismiss from the complainant.

The Commission considered the motion to dismiss at its November 28, 2006 meeting. During the public portion of the meeting, the Commission voted to grant the respondent’s motion to dismiss.

FACTS

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

The respondent is a member of the Board. The Board has 12 members and seven members make a quorum. At the June 27, 2006 Board meeting, the respondent stood in the main hallway outside the door of the Board room and did not take her seat when the meeting was called to order by the Board secretary. There were six members of the Board present. After the roll call was taken, there was not a quorum. If the respondent had taken her seat 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. The complainant alleges that there were three other members of the Board present in the school at the time of the meeting who failed to take their seats at the Board 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 complainant first alleges 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, she stood in the hallway outside the door of the Board room and did not take her seat 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), complainant alleges that the respondent surrendered her independent judgment when the respondent and the other Board members aligned with Atlantic City Council President Craig Callaway did not take their seats at the June 27, 2006 Board meeting. The complainant also offers as evidence a quote from one of the Board members allegedly aligned with Mr. Callaway that was in the Atlantic City Press on June 28, 2006, which stated "...the nature of the divided board means that the group has to wait until all board members were present to keep from tipping the balance of the votes." The Commission can find no factual evidence to prove that the respondent was aligned with Mr. Callaway. The quote offered as evidence does not refer to the respondent and is made by another Board member.

The Commission notes that the complainant also alleges that there were three other Board members present in the school at the time of the meeting who also failed to take their seats at the meeting. The Commission cannot find that respondent's failure to take a seat at the Board meeting was the sole cause of the meeting being cancelled. There were other Board members present who could have taken a seat at the meeting to create a quorum.

In viewing the facts in the light most favorable to the complainant, the Commission can find no evidence to prove factually that the respondent surrendered her independent judgment to special interest or partisan political groups or used the schools for personal gain or for the gain of friends when she did not take her seat at the June 27, 2006 meeting of the Board. Therefore, the Commission grants the respondent's motion to dismiss the complainant's allegation that respondent violated N.J.S.A. 18A:12-24.1(f).

The complainant also alleges that the respondent 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, she stood in the hallway outside the door of the Board room and did not take her seat 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 respondent failed to take her seat at the June 27, 2006 Board meeting, which caused the meeting to be cancelled for lack of a quorum, she 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 respondent 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 respondent's motion to dismiss complainant's allegation that respondents violated N.J.S.A. 18A:12-24.1(h).

The complainant also alleges 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, she stood in the hallway outside the door of the Board room and did not take her seat 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 complainant alleges that when the respondent failed to take her seat at the June 27, 2006 Board meeting, which caused the meeting to be cancelled for lack of a quorum, she 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 job. 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 respondent failed to support and protect school personnel in proper performance of their duties. Therefore, the Commission grants the respondent's motion to dismiss complainant's allegation that respondent violated N.J.S.A. 18A:12-24.1(i).

DECISION

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

REQUEST FOR SANCTIONS

At its December 19, 2006 meeting, the Commission considered the respondent's 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 respondent does 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 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 – C33-06

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