

LANNIE ALLMOND, ELONDA	:	BEFORE THE SCHOOL
CURRIE, EDNA HALL, STEVEN	:	ETHICS COMMISSION
MOORE, LINDA G. STEELE,	:	
& STEPHEN L. YOUNG	:	
v.	:	
	:	Docket No. C38-06
STEPHANIE DAVIES-KHAN,	:	
ATLANTIC CITY	:	DECISION ON
BOARD OF EDUCATION	:	MOTION TO DISMISS
ATLANTIC COUNTY	:	
	:	

PROCEDURAL HISTORY

This matter arises from a complaint filed on July 13, 2006 by Lannie Allmond, Elonda Currie, Edna Hall, Steven Moore, Linda G. Steele and Stephen Young 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. The complainants specifically allege that the respondent violated N.J.S.A. 18A:12-24.1(f), (h) and (i) of the Code of Ethics for School Board Members when the respondent failed to take her seat at the June 27, 2006 Board meeting causing a lack of a quorum.

Through her attorney, Jeffrey O. Casazza, Esquire, the respondent 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 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 complainants.

The Commission considered the motion to dismiss at its March 27, 2007 meeting. During the public portion of the meeting, the Commission voted to grant the respondent’s motion to dismiss all of the allegations. At its April 24, 2007 meeting, the Commission voted to find that the complaint was not frivolous and adopted this decision.

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.

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 when the meeting was called to order. 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. Board member Rochelle 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 allege that the respondent 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 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), complainants allege that the respondent surrendered her independent judgment to special interest or partisan political groups when she did not take her seat at the June 27, 2006 Board meeting. The Commission can find no factual evidence to show that the respondent did not take her seat due to the influence of some special interest or partisan political group. The respondent was standing in the hall and chose not to take her seat 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 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 complainants' allegation that the respondent violated N.J.S.A. 18A:12-24.1(f).

The complainants next allege 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 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 complainants allege 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 cancelled agenda items, or place the agenda items of a cancelled meeting on the 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 the 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 complainants' allegation that the respondent violated N.J.S.A. 18A:12-24.1(h).

Finally, the complainants allege that the respondent 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 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 complainants allege 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 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 respondent failed to support and protect school personnel in proper performance of their duties. Therefore, the Commission grants the respondent's motion to dismiss complainants' allegation that the 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 April 24, 2007 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 the complaint is 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 the complaint is not frivolous and denies the respondent's 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 – C38-06

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 allegation Stephanie Davies-Khan violated the Act; 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 as its final decision on the 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 April 24, 2007.

Lisa James-Beavers
Executive Director
PCG/LJB/MET/ethics/decisions/C38-06