

CRAIG GUINTA	:	BEFORE THE SCHOOL
	:	ETHICS COMMISSION
v.	:	
	:	
NANCY O'DOWD	:	Docket No. C45-05
CHERRY HILL TOWNSHIP	:	
BOARD OF EDUCATION	:	DECISION
CAMDEN COUNTY	:	
	:	

**PROCEDURAL HISTORY**

This matter arises from a complaint filed on November 10, 2005 by Craig Guinta alleging that Nancy O'Dowd, a member of the Cherry Hill Township Board of Education (Board), violated the School Ethics Act (Act), N.J.S.A. 18A:12-21 et seq. The complainant specifically alleges that the respondent violated N.J.S.A. 18A:12-24.1(b) and (f) of the Code of Ethics for School Board Members when, during a Board meeting, she stated that “[she] was elected by the West community and that is who [she] represent[s].”

For good cause shown, the Commission granted the respondent an extension of the time to file a response. On January 19, 2006, the respondent, through her attorney, Joseph R. Lang, Esquire, filed a motion to dismiss the complaint and asked the Commission to find the complaint frivolous and impose sanctions on the complainant. In the motion to dismiss, respondent argued that the complainant misquoted the respondent. He also argued that the complainant has failed to establish any facts to support the allegations. In her certification, which was submitted with the motion to dismiss, the respondent denied that she made the statement that the complainant attributes to her. She certified that she stated that she “was elected by the West community too and need[ed] to represent their interests as well as the interests of the East community.” She argued that all Board members must consider how the stadium proposal will affect both sides of town because the district has recently emerged from a lawsuit charging that there were disparities between Cherry Hill East High School and Cherry Hill West High School favoring the East side. Respondent also certified that her Board voting record reflects that she has significantly favored proposals for the East side rather than the West side.

In complainant’s response to the motion to dismiss, he asserted that the respondent continually interrupted his presentation before the Policy and Legislation Committee and cut his presentation short. He also argued that the respondent stated that she would have no interest in any project at Cherry Hill East High School, until the tennis project was addressed at Cherry Hill West High School. Complainant argued that when the respondent was questioned on this issue, she responded that, “[she] was elected by the West community and that is who [she] represent[s].” Complainant further argued that this comment and respondent’s actions clearly violate N.J.S.A. 18A:12-24.1(f) because she is upholding promises to her political base and neglecting the district as a whole. Complainant also argued that the allegations in the complaint are not frivolous.

The Commission considered the complaint, motion to dismiss, certification of the respondent and the complainant's response to the motion to dismiss at its February 28, 2006 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 frivolous and the complainant should be fined \$100.

## **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.

The respondent has been a member of the Board since being elected in 2005. She is a member of the Policy and Legislation Committee of the Board. Complainant is a member of a committee that is attempting to have a new football stadium built for the Cherry Hill East High School. On or about September 6, 2005, respondent attended a meeting of the Policy and Legislation Committee. At the meeting, complainant and his committee made a presentation concerning a new football stadium for Cherry Hill East High School. Respondent maintains that during the presentation, the complainant was questioned by members of the Committee who asked for additional information. Respondent further maintains that the Committee members were concerned about the lack of a business plan as well as a lack of contingency plans for such things as overruns. Complainant states that he was continually interrupted by respondent and his presentation was cut short. Complainant maintains that respondent stated that she would have no interest in any project at Cherry Hill East High School, until the tennis project was addressed at Cherry Hill West High School. Complainant contends that the stadium project would impact a majority of the student body, while the tennis project would impact only seven students. He also stated that when the respondent was questioned about this issue, she responded, "I was elected by the West community and that is who I represent." Respondent certified that three of the four Committee members voted against moving the proposal forward to the full Board until the information the Committee members requested was provided to the Committee.

## **ANALYSIS**

The Commission notes that, pursuant to N.J.S.A. 18A:12-29, the complainant bears the burden of proving factually any violations of the Code of Ethics for School Board Members. The complainant alleges that the respondent violated N.J.S.A. 18A:12-24.1(b) of the Code of Ethics for School Board Members during a meeting of the Policy and Legislation Committee. N.J.S.A. 18A:12-24.1(b) provides:

I will make decisions in terms of the educational welfare of children and will seek to develop and maintain public schools that meet the individual needs of all children regardless of their ability, race creed, sex, or social standing.

To prove a violation of N.J.S.A. 18A:12-24.1(b), the complainant contends that respondent continually interrupted him during a presentation he made before the Policy and Legislation Committee concerning a new football stadium for Cherry Hill East High School. He claims that the respondent cut his presentation short, and stated that she had no interest in any project at Cherry Hill East High School until the tennis project was addressed at Cherry Hill West High School. When questioned about that statement, complainant contends that respondent said that “I was elected by the West community and that is who I represent.” The Commission notes that the respondent maintained that her statement was misquoted. Even if respondent made the statements as the complainant claims, such statements do not prove a violation of N.J.S.A. 18A:12-24.1(b). Nor does the fact that respondent continually interrupted complainant during his presentation. It is the duty of a board member to make decisions in terms of the educational welfare of children and to confine their Board actions to policy making planning and appraisal. N.J.S.A. 18A:12-24.1(b) and (c). A decision regarding school facilities is a policy decision to be made by the Board. See, State v. Lally, 80 N.J. Super 502 (LawDiv. 1963). It is clear to the Commission that the respondent was involved in the deliberative process of making a policy decision regarding the facility needs of the district. As respondent noted, the district had just emerged from a lawsuit regarding disparities between Cherry Hill East High School and Cherry Hill West High School favoring the East side. It appears that the respondent was mindful of the district’s recent legal concerns and was actively involved in reviewing the presentation. The respondent’s statements and actions appear to indicate that she was performing her duties as a Board member to weigh, debate and decide what the best facilities policy was for the district. The fact that the tennis project impacted only seven students while the stadium project could impact a majority of the student body does not prove that the respondent failed to meet the individual needs of all children regardless of their ability, race, creed, sex or social standing. It appears to the Commission that the respondent was attempting to balance the interests of all of the children in the district. The fact that the complainant believes that the needs of the students would be better met by the stadium project rather than the tennis project is insufficient to establish a violation of the Act.

In viewing the facts in the light most favorable to the complainant, the Commission can find no factual evidence that the respondent failed to make decisions in terms of the educational welfare of children. The Commission also can find no factual evidence that the respondent failed to seek, develop and maintain public schools that meet the individual needs of all children regardless of their ability, race creed, sex, or social standing. Therefore, the Commission finds no probable cause to credit the allegations that the respondent violated N.J.S.A. 18A:12-24.1(b).

The complainant also alleges that the respondent violated N.J.S.A. 18A:12-24.1(f) of the Code of Ethics for School Board Members during a meeting of the Policy and Legislation Committee. 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), the complainant contends that the respondent's actions and comments at the Policy and Legislation Committee meeting show that she is clearly upholding promises to her political base and neglecting the district as a whole. In order to find that respondent surrendered her independent judgment to special interest or partisan political groups, the Commission must determine if the West community is a special interest group or a partisan political group. The complainant has presented no factual evidence to show that the West community is a special interest group. The West community is merely one section of the Cherry Hill School District, as the East community is another section. There is no evidence that either community is organized around some type of special interest. That group is organized around the special interest of a new stadium proposal. The Commission has no information on which to base a finding that the West community is a partisan political group. In viewing the facts in the light most favorable to the complainant, the Commission can find no factual evidence that the respondent surrendered her independent judgment to special interest or partisan political groups. Therefore, the Commission grants the motion to dismiss the allegations that the respondent violated N.J.S.A. 18A:12-24.1(f).

## **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 complaint is completely devoid of any factual evidence that would prove the allegations. Second, all the factual evidence presented by the complainant shows that the respondent was rightfully fulfilling her Board member duties by deliberating, weighing and debating an important policy decision regarding the facility needs of the district. The Commission finds that the complainant 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. Therefore, the Commission finds that the complaint was frivolous and imposes a sanction on the complainant of \$100.

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 – C45-05**

**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 finds that the complaint is frivolous and imposes the sanction of a \$100 fine on the complainant; 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 and the find the complaint frivolous and fine the complainant \$100 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 March 28, 2006.

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Lisa James-Beavers  
Executive Director