

advised that the policy was discussed at the Board's May 28, 2002 meeting and was scheduled for Board vote on June 11, 2002.

- **June 15, 2002** - Ms. Dodson participated in web-site discussions concerning the Gifted and Talented program in the district and explained the testing process for nominees of the Gifted and Talented program, in response to inquiries from parents and citizens.
- **October 15, 2002** - Ms. Dodson explained the Board's process for addressing teacher schedule changes and advised that the Board's Curriculum Committee (CC) would review proposals from administrators and CC recommendations would be brought before the full Board for approval.¹

Ms. Dodson posted comments from parents within the district concerning classroom standards, physical education class requirements and health class discussions, but did not personally comment on those matters. In a December 20, 2002 article of the *West Windsor-Plainsboro News*, Ms. Dodson also reportedly commented that teachers should respond to the annual Board survey.

Comments that were made by Ms. Dodson over one year before the date the complaint was filed were not considered by the Commission pursuant to N.J.A.C. 6A:28-1.8(a).

ANALYSIS

Complainant urges the Commission to find that Ms. Dodson violated N.J.S.A. 18A:12-25, N.J.S.A. 18A:12-24(e) and N.J.S.A. 18A:12-24.1(c), (e), (g), (i) and (j) of the Code of Ethics for School Board Members. Each section will be discussed as it relates to the aforementioned allegations.

Complainant first alleges that Ms. Dodson's failure to set forth her moderation of the *WWP Today* web site on her disclosure form is in violation of N.J.S.A. 18A:12-25, which requires school officials to annually disclose employment and financial interest on forms prescribed by the Commission. The Commission notes that there is no information to show a failure of Ms. Dodson to disclose any employment or financial information to the Commission that would give rise to a finding of probable cause that Ms. Dodson violated the section. Therefore, the Commission finds no probable cause to credit the allegation that Ms. Dodson violated N.J.S.A. 18A:12-25.

Complainant next alleges that Ms. Dodson violated N.J.S.A. 18A:12-24(e) when she moderated discussions regarding the districts self-medication policy and teacher scheduling matters. N.J.S.A. 18A:12-24(e) prohibits a school official from the solicitation or acceptance of any gift, favor, loan, political contribution, service, promise of future employment, or other thing of value based upon an understanding that the gift, favor, loan, contribution, service, promise, or other thing of value was given or offered for the purpose of influencing him in the discharge of his official duties. The Commission notes that Ms. Dodson merely provided procedural

¹ The Commission cannot consider the conduct of school officials that occurred more than one year prior to the date the complaint was filed, pursuant to N.J.A.C. 6A:28-1.8(a). The complaint herein was filed on February 3, 2003. All comments made by Ms. Dodson prior to February 3, 2002 were not considered by the Commission.

information to concerned parents regarding the self-medication policy and teacher scheduling matters. The Commission cannot discern any solicitation on the part of Ms. Dodson or her acceptance of a gift that would warrant a finding of probable cause under this section. The Commission therefore finds that there is no probable cause to credit the allegation that she violated N.J.S.A. 18A:12-24(e).

Complainant also alleges that Ms. Dodson violated provisions of the Code of Ethics for School Board Members. The Commission notes that under the Code of Ethics, N.J.S.A. 18A:12-24.1, the complainant has the burden of proving factually that the respondent's conduct is in violation of the Act. First, complainant alleges that Ms. Dodson moderated discussion concerning substandard class rooms and a joint retreat for the Board and teacher association members in violation of N.J.S.A. 18A:12-24.1(c), which provides:

I will confine my board action to policy making, planning, and appraisal, and I will help to frame policies and plans only after the board has consulted those who will be affected by them.

The Commission notes that Ms. Dodson posted the comments of others regarding substandard classrooms, but did not personally discuss the issue. The Commission finds that Ms. Dodson's posting of comments expressed by others does not constitute Board action. Therefore, the Commission finds no probable cause to credit the allegation that Ms. Dodson failed to confine her Board action to policy making, planning and appraisal. The Commission further notes that Ms. Dodson's comments regarding the aforementioned retreat were made in 2001 and therefore cannot be considered by the Commission.

Complainant next alleges that Ms. Dodson violated N.J.S.A. 18A:12-24.1(e), which 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.

The Commission notes that Ms. Dodson made comments regarding the self-medication policy, the Gifted and Talented program and issues regarding teacher schedule changes. However, the Commission finds that the information that she provided was procedural. She did make personal promises or take private action that may compromise the Board. The Commission finds no probable cause to credit the allegation that Ms. Dodson violated N.J.S.A. 18A:12-24.1(e).

Complainant also alleges that Ms. Dodson disclosed confidential information when she moderated discussions regarding classroom standards, physical education class requirements and health class discussions in violation of N.J.S.A. 18A:12-24.1(g), which provides:

I will hold confidential all matters pertaining to the schools which, if disclosed, would needlessly injure individuals or the schools. In all other matters, I will provide accurate information and, in concert with my fellow board members, interpret to the staff the aspirations of the community for its school.

The complainant must prove that Ms. Dodson disclosed confidential information pertaining to the schools that injured certain individuals or the schools. The Commission notes that Ms. Dodson posted the comments of parents concerning classroom standards, physical education class requirements and health class discussions, but did not personally comment on these matters. The Commission further finds that the extent of Ms. Dodson's participation in discussion was to provide procedural information, which may be disclosed to the public. Therefore, the Commission finds no probable cause to credit the allegation that Ms. Dodson violated N.J.S.A. 18A:12-24.1(g).

Under N.J.S.A. 18A:12-24.1(i), the complainant must prove that Ms. Dodson failed to support and protect school personnel in the proper performance of their duties. Ms. Dodson is quoted in an article in the *West Windsor-Plainsboro News* where she commented on the response received for the Board's survey, "I think it would be a shame for teachers to miss this opportunity to have a direct link to those who are the decision-makers. It's a chance for teachers to be anonymous and to say what is on their minds. We have more responses from parents right now than we do teachers and if they want to have their say then they need to respond." The Commission does not find Ms. Dodson's encouragement for teacher participation in the Board's survey to be a failure to support or protect the teachers. Therefore, the Commission finds no probable cause to credit the allegation that Ms. Dodson violated N.J.S.A. 18A:12-24.1(i).

Complainant next alleges that Ms. Dodson violated N.J.S.A. 18A:12-24.1(j), which provides:

I will refer all complaints to the chief administrative officer and will act on the complaints at public meetings only after failure of an administrative solution.

The Commission notes that some of the comments made by Ms. Dodson that are alleged to be in violation of this section were made in 2001 and were not be considered by the Commission. The remaining comments regarding classroom standards, physical education class requirements and health class discussions were made by other parents in the district. They were only posted by Ms. Dodson. Thus, she did not act on complaints before an administrative solution had failed. The Commission therefore finds that there is no probable cause to credit the allegation that Ms. Dodson violated N.J.S.A. 18A:12-24.1(j).

DECISION

For the foregoing reasons, the Commission finds no probable cause to credit the allegations that Ms. Dodson violated the School Ethics Act and dismisses the complaint against her.

REQUEST FOR SANCTIONS

Respondent counterclaims that the complaint is frivolous and urges the Commission to 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 non-prevailing party was frivolous, the Commission shall 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 non-prevailing 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]

Based on the information, pleadings and testimony provided, the Commission finds that the complainant had a genuine concern that members of the staff of the school were being disparaged by comments on a web site moderated by a member of the Board. Although the Commission did not find probable cause, it cannot find that the allegations in the complaint were made in bad faith, solely for the purpose of harassment, delay or malicious injury. Further, the allegations did have a reasonable basis in law in that Board members are held to a higher standard than ordinary citizens. Ms. Dodson was not a board member when she first began to moderate the site, but her activity as moderator understandably came under closer scrutiny after she became a member of the Board. Therefore, the Commission does not find the complaint to be frivolous and declines to impose sanctions.

This decision is a final decision of an administrative agency. Therefore, it is appealable only to the Superior Court--Appellate Division.

Paul C. Garbarini
Chairperson

Resolution Adopting Decision – C05-03

Whereas, the School Ethics Commission has considered the pleadings filed by the parties, the documents submitted in support thereof, testimony and the information obtained from its investigation; and

Whereas, at its meeting of May 27, 2003, the Commission found no probable cause to credit the allegations that Ms. Dodson violated the School Ethics Act, N.J.S.A. 18A:12-21 et seq. and therefore dismissed the charges against her; and

Now Therefore Be It Resolved that the Commission hereby adopts the proposed decision referenced as its 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 this Resolution was duly adopted by the School Ethics Commission at its public meeting on May 27, 2003.

Lisa James-Beavers
Executive Director