



## **PROCEDURAL HISTORY**

This matter arises from three complaints filed against Dolores Callaway, Stephanie Davies-Kahn, Scott Evans, Sophia LaPorte, Rochelle Salway and Pamela Jones, members of the Atlantic City Board of Education (Board). The first complaint, C19-06, was filed on June 14, 2006 by Jenny Cores and Alvaro Cores alleging that the respondents violated the School Ethics Act (Act), N.J.S.A. 18A:12-21 et seq. The second complaint, C20-06, was filed by Digna Ryan on June 16, 2006, and the third complaint, C23-06, was filed by John A. Bates, Jack Kretmar, Alfred J. Mottola and Robert Threadgill on June 19, 2006 alleging that the respondents violated the Act. These three complaints were consolidated for a decision because they involve the same allegations regarding the same respondents. All of the complainants specifically allege 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 voted against five substitute teachers recommended by the superintendent to be placed on the substitute teacher list.

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 complainants that they had the burden of proving factually any violation of the Code of Ethics for School Board Members. The complainants did not attend the meeting. 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. These complaints were consolidated with C21-06, C22-06, C24-06, C25-06, C26-06, C29-06<sup>1</sup> and C32-06 for a hearing because they involved the same respondents and similar issues regarding personnel decisions. The complainant in C29-06 and her two witnesses testified before the Commission. At the end of the testimony, the respondents' attorney made a motion to dismiss these three complaints and the above listed complaints. After deliberation, the Commission voted to grant the respondents' motion to dismiss all of the complaints. At its December 19, 2006 meeting, the Commission voted to find that these complaints 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 and the documents submitted.

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<sup>1</sup> Scott Evans was not included as a respondent in C29-06.

All of the respondents are members of the Board. Complainant, Alvaro Cores is the Assistant Principal at the Atlantic City High School. On April 18, 2006, Mr. Cores distributed political information on his personal time for the school board election ticket of Steele, Crouch and Devlin. Mr. Cores alleges that respondents Pamela Jones and Stephanie Davies-Kahn walked past him and said, "Some assistant principal, huh?" He further alleges that upon exiting Ms. Davies-Kahn yelled at him and a group of teachers who were with him saying, "That's right. No more free checks "Y'all gonna have to work for a change."

All of the complainants, except Mr. Cores, were substitute teachers and had been appointed to the substitute teacher list in past years. They have never faced disciplinary action or unfavorable criticism by the administration. At the June 5, 2006 Board meeting, the superintendent recommended substitute teachers, including the complainants who were substitute teachers, to be added to the substitute teachers list. The respondents voted against the placement of eleven substitute teachers on the list, which included the complainants who were substitute teachers. Complainant Mrs. Cores was the only secretary out of a total of eleven substitute secretaries who was not appointed. Mr. and Mrs. Corse allege that respondents, under the direction of Craig Callaway, targeted the complainants who are substitute teachers because they were supporters of the superintendent.

## **ANALYSIS**

The Commission initially notes that the allegation in C19-06 regarding the racial composition of the alleged "Callaway block" and the racial composition of the eleven substitutes who were not appointed to the substitute teacher list is not pertinent to the complainants' allegation of a violation of N.J.S.A. 18A:12-24.1(f) or (h).

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.

All of the complainants allege 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 the appointment of five substitutes to the substitute teacher list. 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 respondents surrendered their independent judgment to Atlantic City Council President Craig Callaway when they voted against the appointment of five substitutes to the substitute teacher list. The complainants offer no factual proof to substantiate a violation

of N.J.S.A. 18A:12-24.1(f). In C20-06 and C23-06, the complainants note that it is hard to believe that all six Board members found issue with the exact same substitutes. In C19-06, the complainants mention a video of the meeting showing that the respondents were making visual contact and gestures with Ronald Callaway who was enforcing the Council President's will. These statements absent any other evidence are insufficient 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 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 complainants' allegation that respondents violated N.J.S.A. 18A:12-24.1(f).

All of the complainants also allege 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 the appointment of five substitutes to the substitute teacher list. 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 the actions of the respondents were arbitrary and capricious. The complainants also argue that the substitutes who were not appointed to the substitute list had worked as substitutes in prior years and never faced disciplinary action or unfavorable criticism by the administration. 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 appoint the best qualified personnel based on the information before it.

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 complainants' 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 these three complaints are 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 these three complaints are not frivolous and denies the respondents' 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 – C19-06, C20-06 & C23-06**

**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.

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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 December 19, 2006.\*

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Lisa James-Beavers  
Executive Director

PCG/LJB/MET/ethics/decisions/C19, 20 & 23-06

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