
City Attorney

City of Oakland
Public Ethics Commission
October 3, 2005

In the Matter of)
) Complaint No. 05-04
) **SUPPLEMENTAL**

James Mordecai filed Complaint No. 05-04 on March 14, 2005.

I. PROCEDURAL BACKGROUND

Mr. Mordecai filed Complaint No. 05-04 alleging that the Oakland Board of Education ("School Board") and State Superintendent Dr. Randolph Ward violated "time and agenda restrictions" at the School Board's regular meeting of March 9, 2005. This complaint was the second Mr. Mordecai brought against the School Board in which he alleged violations of the Brown Act and Sunshine Ordinance. (See also Complaint No. 04-09.) **Attachment 1.**

The Commission considered Complaint No. 05-04 at its regular meeting of June 6, 2005. That complaint was heard concurrently with Complaint No. 04-09.

At the June 6, 2005, meeting, the Commission voted to dismiss Complaint 04-09 and to postpone action on Complaint No. 05-04. The Commission directed staff to contact School Board staff to discuss issues of speaker time at future School Board meetings. Following the June 6, 2005, Commission meeting, Commission staff attempted to contact School Board staff by telephone. None of the calls were returned. On July 15, 2005, Commission staff sent a letter to Dr. Ward, Board Secretary Edgar Rakestraw and School District General Counsel Roy Combs advising them of the Commission's action and desire to discuss issues of speaker time at future School Board meetings. None of the recipients responded. **Attachment 2.**

II. STATUS OF COMPLAINT 05-04

In the preliminary report on Complaint 05-04, Commission staff identified only one issue among the several allegations Mr. Mordecai made: Whether the Oakland School Board violated Brown Act Sections 549954.3(a) and (b) by allotting a total of two minutes of speaking time for members of the public to address the School Board under its "Public Comments" item as well as three additional items following "Public Comments" on the March 9 agenda. Commission staff advised that the Commission had discretion whether to schedule and conduct a formal evidentiary hearing on this issue. Whether to hold such a hearing is the question before the Commission tonight.

There are at least two factors the Commission should consider in deciding whether to hold an evidentiary hearing. The first is the City Attorney's opinion that the Commission might not be able to enforce a remedy against the School Board even if it finds that the School Board violated provisions of the Brown Act. The reason is that the School Board is governed by state law as it pertains to the conduct of its public meetings. California courts have ruled that local agencies may not impose different requirements on local school boards in those areas expressly regulated under state law. Since the Sunshine Ordinance provides a remedy that is different from those provided under the Brown Act (i.e., it requires local bodies to affirmatively cure and correct any violation of the Sunshine Ordinance or Brown Act as determined by the Commission), that remedy may not be enforceable against the School District.

The other factor is simply a matter of Commission time and resources. The issue of whether the School Board provided sufficient speaking time will likely require an evaluation of meeting minutes, video or audio recordings, and/or witness testimony at a formal evidentiary hearing. Depending how the Commission chooses to organize itself to conduct the hearing (see below), a formal hearing could involve a substantial investment of Commission time and resources.

III. STAFF RECOMMENDATION

The Commission has discretion whether to schedule and hold a formal evidentiary hearing on the issue of whether the School District violated Brown Act Sections 549954.3(a) and (b). Because of the City Attorney's advice that the Commission would not be able to require the School District to "cure and correct" any violation, Commission staff questions whether the Commission should expend the time and resources to determine this issue. Should the Commission decide to proceed with a formal hearing, it must also decide whether to 1) conduct the hearing as a full Commission, or 2) delegate its authority to gather and hear evidence to one or more of its members or to an independent hearing examiner. [See General Complaint Procedures, Section IX(A).]

Respectfully submitted,

Daniel D. Purnell
Executive Director

*** City Attorney approval as to form and legality relates specifically to the legal issues raised in the staff report. The City Attorney's approval is not an endorsement of any policy issues expressed or of the conclusions reached by staff on the merits of the underlying complaint.*