



For Official Use Only

City of Oakland

Public Ethics Commission

Stamp Date/Time Received:

OCT 20 11:19 AM
 PUBLIC ETHICS COMMISSION
 OAKLAND

COMPLAINT FORM

Complaint Number: 05-10

Please Type or Print in Ink and Complete this Form.

This complaint concerns a possible violation of: (please check all that apply)

The Oakland Sunshine Ordinance, California Public Records Act or Brown Act. (Access to public meetings or documents.)

Oakland Campaign Reform Act

Oakland City Council's Rules of Procedure/Code of Ethics

Oakland Limited Public Financing Act

Oakland Conflict of Interest regulations

ATTACHMENT 1

Item E-2
 Date 12-12-05
 Page 3 of 7

Oakland Lobbyist Registration Act

Oakland False Endorsement In Campaign Literature Act

I am/We are not sure which specific law, ordinance or regulations apply. However, I am/We are requesting that the Ethics Commission determine if my/our complaint is within its jurisdiction.

The alleged violation occurred on or about the following date(s) *Oct. 13, 2005.*

The alleged violation occurred at the following place: *Cambridge Room
Special Education Program
offices
2850 West Street
Oakland, Ca. 94608*

Please provide specific facts describing your complaint. (Or attach additional pages as necessary.)

See attached (two (2) pages.

The persons you allege to be responsible for the violation(s) are:

*Oakland School Board
State Administrator
Randolph Ward*

Any witnesses who were involved and/or who can provide additional information are: (Please indicate names and phone numbers, if available.)

*Mr. Rakestraw
Board Secretary
Oakland Public Schools*

ATTACHMENT 1

PLEASE NOTE:

Item E-2
Date 12-12-05
Page 4 of 7

There may be other laws that apply to the violation(s) you are alleging. The time limit to commence a legal proceeding to enforce those laws may not be extended by filing this complaint. You should contact an attorney immediately to protect any rights available to you under the law.

By filing this complaint with the Public Ethics Commission it, and all other materials submitted with it, becomes a public record available for inspection and copying by the public.

NAME: James Mordeai PHONE NO.(Day): (510) 205-4635

ADDRESS: 5020 Webster St PHONE NO.(Eve.): (510) 205-4635

CITY: Oakland STATE: CA ZIP: 94609

FAX NO.: () _____

E-MAIL Jim2812@hotmail.com

PLEASE RETURN THIS FORM TO:

Public Ethics Commission
One Frank Ogawa Plaza, 4th floor
Oakland, CA 94612

Phone: (510) 238-3593
FAX: (510) 238-3315

[Back](#)

ATTACHMENT 1

Item E-2
Date 12/2/05
Page 5 of 7

The Public Ethics Commission has been considering my complaint No. 05-04. The Commission is dealing with my assertion that the Board's ongoing policy is to allot a maximum of three minutes, or less, per public speaker to address all agenda and non-agenda items at school board meetings. I would like to add to that complaint and have consolidated into one complaint the following complaint regarding a Special Meeting of the Oakland School Board, October 13, 2005.

My second compliant also deals with the issue of the School Board providing a reasonable amount of time for speakers to address the governing body as required by the Ralph M. Brown Act. Although the compliant 05-04 was filed in regard to a regular meeting of the School Board, the issue of a reasonable amount of time to address the governing board is the same issue for both regular and special meetings. The Oakland School Board has, under the State Administrator, enforced an inflexible three minutes per speaker bylaw policy at both types of meetings. I assert that a rigidly enforced rule that limits public comment to a maximum of three minutes on a public agenda item is a violation of the Brown Act. Under the Brown Act a school board has a right to regulate public comment but such regulation must be "reasonable".

The Oakland School Board Special meeting of October 13, 2005 was an "unreasonable" regulation of public comment because the circumstance required that I be granted additional time. Instead, the Board, and State Administrator, steadfastly enforced the three minutes per speaker rule.

The 10/13/05 Special Meeting had two agenda items. The meeting took almost three hours-- beginning about 9:00 a.m. and lasting until after 12:00 p.m. The first agenda item was acted on quickly and the rest of the three hours was spent on Ms. Mayor from FICMAT presenting her report, the Board asking questions and discussing the report.

When the chair began the FICMAT agenda item by breaking down the 300-page report into subsections for discussion, I got the chair's attention, and started to request that I be allowed to comment after the Board concluded its remarks on each section of the report. However, before the chair responded, the State Administrator intervened and insisted that my comments be restricted to three minutes. Furthermore, the State Administrator demanded that if I made a requested of the chair regarding meeting procedure that such a request would be part of my three minutes allocated for public comment.

I chose to remain silent rather than have time subtracted from my public comment allocation of three minutes. Also, I was concerned that if I presented my procedural request that I would have to immediately begin my public comment before hearing Ms. Mayor and the Board completed their discussion of the report.

The Brown Act requires a local governing body's restrictions on public comment be "reasonable". Limiting public comment to a rigid three minutes, no matter the complexity of the subject, or the length of a School Board discussion, is not reasonable. It is the California Attorney General's opinion that a regulation limiting the time afforded public comment must be flexible according to the complexity of the agenda item. The

three-hour discussion of the FIGMAT report and limiting me to three minutes was not reasonable because the circumstance of having a complex subject that had to be subdivided called for flexibility in allotment of public comment time. The fact I was the only public speaker reinforces the point that there was no reason to limit my comments to three minutes. The Attorney General's opinion supports the idea that limits on public comment should be flexible and depend on the complexity of the subject. The Board did not show flexibility when it had the opportunity to do so. I had less than 5 seconds per page to comment on the over 300-page report. This was the third report that dealt with an evaluation of the management of the Oakland Schools by an independent body hired by the State government. And, the report ~~is~~ alleges to provide the basis for restoring partial authority to the Oakland School Board. The Board thought the report important enough to spend three hours discussing it. But I, one of only two members of the public present, was still limited to three minutes. I was the only person signed up to speak but I was still limited to three minutes.

My allocated three minutes, for a report presented and discussed by the Board for three hours, was in no way a reasonable regulation of public speech. Three is a magic number in children's literature: the three little pigs, fairies giving out three wishes, and the three blind mice. But, "three" is not magical when it becomes an unreasonable limit on public comment. Citizens should have adequate time to comment at a public meeting. If three minutes is not a fair and reason amount of time because of the complexity of an agenda item, then a public speaker must be given additional time overriding the Board's standard three minute limitation on public speech.

I would hope that the Commission goes to a full hearing on complaint 05-04 and my most recent compliant. My first complaint calls on the School Board to provide adequate time at meetings for the public to address each agenda item. And, the second complaint calls on the School Board to be flexible in enforcing its maximum of three minutes per speaker rule and provide additional time to public speakers when an agenda item is complex. Both complaints deal with a public speakers right to be allotted adequate time to take part in discussions at a public meeting.

Jim Mordecai

Jim Mordecai
510-205-4635
5022 ~~5020~~ Webster Street
Oakland, Ca. 94609

ATTACHMENT 1

Item E-2
Date 12-12-05
Page 7 of 9