
City Attorney

City of Oakland
Public Ethics Commission
February 7, 2005

In the Matter of)
) Complaint No. 04-02
) **(SUPPLEMENTAL)**

I. COMPLAINT AND PROCEDURAL HISTORY

Pamela Drake filed Complaint No. 04-02 alleging that Dr. Randolph Ward and the Oakland Board of Education ("School Board") violated the Oakland Sunshine Ordinance and Brown Act by limiting public access to a School Board meeting on January 28, 2004. **Attachment 1.**

The Commission scheduled this complaint for consideration at its regular meeting of August 30, 2004. At the request of Ms. Drake, the item was continued to the Commission's regular meeting of October 4, 2004. After debate and extensive public comment, the Commission directed staff to set the matter for an evidentiary hearing on the issue of whether the Oakland School Board violated specific provisions of the Sunshine Ordinance. Hearing Chairperson Andrew Wiener established a hearing date of December 15, 2004. A pre-hearing conference was held on November 15, 2004, attended by Commissioner Weiner, Ms. Drake, attorney Anne Weills and Commission staff.

On December 1, 2004, Ms. Drake emailed to Commission staff a request to postpone the December 15, 2004, hearing. Ms. Drake advised Commission staff that the respondent School Board had scheduled a public hearing on the date set for the hearing and that she and her witnesses desired and needed to attend the School Board hearing. She indicated that she would request a "new hearing" if, in her opinion, the School Board committed any additional violations (of open meeting laws.) **Attachment 2.**

On December 3, 2004, Hearing Chairperson Wiener issued a determination granting Ms. Drake's request and further ordered that "on or before December 31, 2004, complainant shall provide the Public Ethics Commission with either written notice of withdrawal of her pending complaint or a written request to set a new evidentiary hearing date; if neither is received by that date the Commission will deem the pending complaint withdrawn and subject to dismissal or other further action by the Public Ethics Commission." **Attachment 3.**

A copy of the written determination was mailed to Ms. Drake, Ms. Weills, and representatives of the Oakland School Board.

As of December 31, 2004, Ms. Drake had not submitted any communication, written or otherwise, requesting a new hearing date or withdrawing her complaint. There has also been no communication from Ms. Drake to Commission staff at any time after December 31, 2004, requesting a new hearing.

II. ANALYSIS

Section IX of the Commission's General Complaint Procedures authorizes the hearing chairperson to determine all preliminary matters including, but not limited to, requests for postponement of hearings. In granting Ms. Drake's request for a postponement, the hearing chairperson directed Ms. Drake to provide either a written request for a new hearing date or a written notice that she was withdrawing her complaint by December 31, 2004. Ms. Drake failed to provide any communication with regard to her complaint and, pursuant to the hearing chairperson's determination, the complaint has been deemed withdrawn and is subject to this pending action to dismiss.

Section III.B of the General Complaint Procedures further provides that the Executive Director may recommend dismissal of any complaint that is "time barred." By failing to request a new hearing date at any time after the request for postponement was granted, Commission staff recommends Complaint No. 04-02 be dismissed.

Respectfully submitted,

Daniel D. Purnell
Executive Director

*** City Attorney approval as to form and legality elates 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.*