

<b>JOHN TOURIAN</b>	:	<b>BEFORE THE SCHOOL</b>
	:	<b>ETHICS COMMISSION</b>
<b>v.</b>	:	
	:	
<b>BENEDICT TANTILLO et al,</b>	:	<b>Docket No. C07-05</b>
<b>PASCACK VALLEY REGIONAL</b>	:	
<b>BOARD OF EDUCATION</b>	:	<b>DECISION</b>
<b>BERGEN COUNTY</b>	:	
	:	

**PROCEDURAL HISTORY**

This matter arises from a complaint filed on March 28, 2005 by John Tourian referencing a complaint enclosed on disk alleging that the following respondents violated the School Ethics Act (Act) N.J.S.A. 18A:12-21, et seq.: Dr. Benedict Tantillo, Superintendent of Pascack Valley Regional School District (District); Dr. Vincent Ochino, Business Administrator/Board Secretary; Dr. Lawrence Meyerson, President of the Pascack Valley Regional Board of Education (Board); and all the members of the Board with Mr. Seigel, Mr. Steinfeld, Dr. Golin, Ms. Politi, Ms. Ellis, Leta Gordon and Mr. Hall listed individually. In response to a request from the Commission to provide a printed version of the complaint rather than an electronic version, the Complainant filed a printed version of the complaint on April 6, 2005.

The complainant specifically alleges that the respondents violated the Act as follows:

1. Dr. Tantillo violated N.J.S.A. 18A:12-25 and 26 because he did not disclose his financial interest because his anticipated salary would increase if S-1701 is repealed;
2. Dr. Meyerson, Board President, violated N.J.S.A. 18A:12-24.1 and 18A:12-26 because he is a member of the governing body of Hillsdale, serving as its municipal prosecutor;
3. Board members, Dr. Meyerson, Mr. Siegel and Mr. Steinfeld violated N.J.S.A. 18A:12-24.1, 18A:12-25 and 26 when they solicited business from parents, students and taxpayers in a resource directory for the program "It's Your Life 411;"
4. Dr. Meyerson and Dr. Golin violated N.J.S.A. 18A:12-24, 24.1, 25, 26 and 27 when they included dancing in the school curriculum because their daughters liked it;
5. The Board violated N.J.S.A. 18A:12-24.1, 25, 26, 27, and 28 when they failed to obtain bids on contracts that require bids. The contracts were awarded to friends and the companies that were awarded the contracts have inflated the costs;
6. The Board violated N.J.S.A. 18A:12-24.1, 25, 26 and 27 because the demographic study's projected student population for 2005 is wrong;
7. The Board violated N.J.S.A. 18A:12-24.1, 25 and 26 when they failed to obtain bids on multimillion contracts that require bids;

8. The Board is considering using surplus money from a referendum to buy artificial turf when acquisition of the artificial turf was not included in the referendum;
9. Dr. Meyerson, Mr. Siegel, Ms. Politi, Ms. Ellis, Ms. Leta Gordon, Dr. Occhino and Mr. Hall have violated the Open Public Records Act (OPRA) and N.J.S.A. 18A:12-24 and 29 because they gang up on dissenters when they ask for accountable spending;
10. The administration and the Board withhold information in violation of OPRA, N.J.S.A. 47:1A-1 et seq.; and
11. Dr. Tantillo insults taxpayers because he sent a mailing to all households with children telling them to call, write and ask for repeal of S-1701, but did not send the mailing to households without children.

After the Commission granted an extension, for good cause, of the time to file an answer, respondents submitted an answer by way of counsel, Rodney T. Hara, Esquire, wherein they responded as follows:

1. There was no response to allegation one.
2. In response to allegation two, respondents argued that Dr. Meyerson is a municipal prosecutor and, as such, he is not a member of the governing body of Hillsdale. The municipal prosecutor is an appointed position and is responsible for prosecuting certain criminal and quasi-criminal complaints.
3. In response to allegation three, respondents maintained that the “It’s Your Life 411” program was presented by the District to students to help them address the problems that teenagers experience. It was funded entirely with grants. The organizations and professionals who participated, including Dr. Meyerson, Mr. Siegel and Mr. Steinfeld, volunteered their time. The Board members were not aware that a directory was being prepared and were not involved in the development of the directory. Furthermore, the Board members did not know that they would be listed in the directory.
4. In response to allegation four, the respondents noted that the dance team is an extracurricular activity, which was in existence prior to Dr. Meyerson’s and Dr. Golin’s election to the Board. Furthermore, the Board approved the position of advisor to the dance team. The respondents argued that the fact that the Board members’ daughters participate in the dance team does not create a conflict of interest for the Board members.
5. In response to allegation five, the respondents argued that the contracts that were awarded, were awarded by the Board pursuant to the professional services and extraordinary unspecifiable services exceptions to the bidding laws at N.J.S.A. 18A:18A-5. Furthermore, the Commission does not have jurisdiction to hear a complaint regarding a violation of the bidding laws.
6. In response to allegation six, the respondents argued that since the allegations pertain to a demographic study and a referendum in December 2002 which took place more than one year from the date the complaint was filed, the allegations should be dismissed as untimely in accordance with N.J.A.C. 6A:28-6.1(b).
7. In response to allegation seven, the respondents argued that the contracts that were awarded, were awarded by the Board pursuant to the professional services

and extraordinary unspecifiable services exceptions to the bidding laws at N.J.S.A. 18A:18A-5. Respondent also argued that the contracts were awarded more than one year from the date of filing of the complaint and the allegation should be dismissed as untimely pursuant to N.J.A.C. 6A:28-6.1(b). Furthermore, the Commission does not have jurisdiction to hear a complaint regarding a violation of the bidding laws.

8. In response to allegation eight, the respondents argued that the expenditure of monies on artificial turf is not being funded with referendum monies. Furthermore, the Commission does not have jurisdiction over this allegation.
9. In response to allegation nine, the respondents argued that the incident referred to occurred on March 15, 2004, which is more than one year prior to the filing of the complaint and the allegation is untimely pursuant to N.J.S.A. 6A:28-6.1(b).
10. In response to allegation ten, the respondents argued that the Commission does not have jurisdiction to hear complaints regarding violations of OPRA.
11. In response to allegation eleven, the respondents argued that the flyer did not advocate the repeal of S-1701; it invited parents to an informational meeting on the impact of S-1701. Furthermore, the meeting was publicized in the local newspaper. Moreover, the complainant made no claim that respondent has violated a specific provision of N.J.S.A. 18A:12-24.

The Commission invited the parties to attend its August 23, 2005 meeting. The parties were advised of their right to bring counsel and witnesses, but the Commission did not require that they attend. At the August 23, 2005 meeting, the complainant attended and presented testimony to the Commission. The respondents did not attend the meeting. In the public session, the Commission voted to table the matter in order to get more information from the respondents regarding allegation three. The respondents provided a timely response to the Commission's request for additional information. At its September 27, 2005 meeting, the Commission reviewed the additional information and voted to find no probable cause to credit the allegations that the respondents violated the Act. The Commission also found that the complaint was not frivolous. The Commission adopted this decision at its meeting of October 25, 2005.

## **FACTS**

The Commission was able to discern the following facts based on the pleadings, documents submitted and the testimony.

At all times relevant to this complaint Dr. Tantillo was the Superintendent of the District; Dr. Meyerson was President of the Board and the municipal prosecutor for Hillsdale; Dr. Occhino was the Board secretary/school business administrator; and Mr. Seigel, Mr. Steinfield, Dr. Golin, Ms. Politi, Ms. Ellis, Ms. Gordon, and Mr. Hall were members of the Board. Hillsdale is one of four municipalities that comprise the Pascack Valley High School District (District). The Mayor and Council are elected public officials. The municipal prosecutor position in Hillsdale is an appointed position and the duties of the municipal prosecutor are to prosecute certain criminal and quasi-criminal complaints that fall within the jurisdiction of Hillsdale. This position is separate and

distinct from the borough attorney who handles the legal matters for Hillsdale. The municipal prosecutor is not a part of the governing body of Hillsdale.

On October 8, 2004, the Pascack Hills and Pascack Valley High Schools of the District presented the "It's Your Life 411" program. The program was an interactive program that helped adolescents develop decision-making skills and learn about the consequences of poor decisions, the services provided by community service agencies and how to ask appropriate professionals for help. Fifty-eight agencies participated in the program. All participants were volunteers. The program was created and coordinated by Carol Adelson. Board members Dr. Meyerson, Mr. Seigel and Mr. Steinfield all volunteered their services to the program. A program directory was created, which listed all of the participating agencies and their services. The program directory included a listing of the legal services provided by Dr. Meyerson, Mr. Seigel and Mr. Steinfield. None of the Board members were aware that a directory was going to be created or that they would be listed in the directory. They were not involved in the creation of the directory and did not provide the information that was presented in the listing. They did not see the directory before it went out nor did they edit it.

The District had a dance team as an extracurricular activity before Dr. Meyerson and Mr. Golin were elected to the Board. On October 4, 2004, the Board voted to approve the fall/winter 2004-2005 athletic appointments of the dance team head coach. Dr. Meyerson's and Mr. Golin's daughters participate in the dance team.

The Board awarded contracts to an architect, engineer, construction manager and attorneys for the bond referendum without obtaining bids, pursuant to the professional services and extraordinary unspicifiable services exceptions to the bidding laws at N.J.S.A. 18A:18A-5.

In December 2002 the Board approved a referendum question based on a demographic study. The referendum was defeated at the polls. The Board expended monies on artificial turf out of the budget rather than with referendum monies since the 2002 referendum was defeated.

Dr. Occhino is the custodian of government records for the District. He has responded to requests for government records that have been submitted by the complainant.

The District sent mailers to households with children attending school to inform the parents that an informational meeting was being conducted by the New Jersey School Boards Association (NJSBA) on the impact of S-1701. The meeting was also publicized in the local newspaper. The meeting was open to the public and state Legislators were present to answer questions from the public.

## **ANALYSIS**

As an initial matter, the Commission notes that the complainant bears the burden of factually proving any violations of the Code of Ethics for School Board Members under N.J.S.A. 18A:12-29.

### **1. Dr. Tantillo's Disclosure Statement**

The Complainant alleges that Dr. Tantillo violated N.J.S.A. 18A:12-25 and 26 because he did not disclose his financial interest in his bigger anticipated salary if S-1701 is repealed on his financial statement. The types of income that are required to be disclosed annually in the financial disclosure statement are defined at N.J.S.A. 18A:12-26(a)1 as follows:

Each source of income, earned or unearned, exceeding \$2,000 received by the school official or a member of his immediate family during the preceding calendar year. Individual client fees, customer receipts or commissions on transactions received through a business organization need not be separately reported as sources of income. If a publicly traded security or interest derived from a financial institution is the source of income, the security or interest derived from a financial institution need not be reported unless the school official or member of his immediate family has an interest in the business organization or financial institution;

Dr. Tantillo is only required to report actual income that he received in the year prior to the year in which he files his disclosure statement. He is not required to report any financial information that may be anticipated in the future. The Commission notes that it is pure speculation that S-1701 will be passed and that Dr. Tantillo will have an increased salary as a result of such passage. Therefore, the Commission finds no probable cause to credit the allegation that Dr. Tantillo violated N.J.S.A. 18A:12-25 and 26 by failing to report speculative future earnings on his disclosure statement.

### **2. Dr. Meyerson's Position as Hillsdale Prosecutor**

The complainant alleges that Dr. Meyerson, Board President, violated N.J.S.A. 18A:12-24.1 and 26 because he is a member of the governing body of Hillsdale, serving as its municipal prosecutor. The Commission fails to see how Dr. Meyerson violated N.J.S.A. 18A:12-26 by serving as Hillsdale's municipal prosecutor while also serving as President of the Board. N.J.S.A. 18A:12-26 requires each school official to file an annual financial disclosure statement. There is no allegation that Dr. Meyerson failed to include his source of income from serving as the municipal prosecutor on his disclosure statement. Therefore, the Commission finds no probable cause to credit the allegation that Dr. Meyerson violated N.J.S.A. 18A:12-26 by serving as the municipal prosecutor of Hillsdale while also serving as President of the Board.

The complainant did not specify which subsection of N.J.S.A. 18A:12-24.1 was violated by Dr. Meyerson by serving as the municipal prosecutor of Hillsdale and the President of the Board. The Commission finds that the only subsection of N.J.S.A. 18A:12-24.1 that could apply to this allegation is N.J.S.A. 18A:12-24.1(f), which 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.

Dr. Meyerson certified that the municipal prosecutor is a position that is appointed by the governing body of the Borough of Hillsdale, which is one of four municipalities that comprise the District. He further certified that the municipal prosecutor is responsible for prosecuting certain criminal and quasi-criminal complaints that fall within the jurisdiction of the Borough of Hillsdale. Finally, he certified that this position is separate and distinct from the borough attorney who handles the legal matters for the Borough of Hillsdale. The Commission notes that the only evidence that the complainant presented was the fact that Dr. Meyerson served as the municipal prosecutor for the Borough of Hillsdale and, in that position, he was a member of the municipal governing body. However, the evidence presented by Dr. Meyerson shows that the municipal prosecutor is not a member of the governing body.

Therefore, the Commission must determine if Dr. Meyerson violated N.J.S.A. 18A:12-24.1(f), by holding the position of municipal prosecutor in one of the four municipalities that comprise the District while at the same time holding the position of President of the Board. The Commission notes that there is no evidence to show any particular instance where Dr. Meyerson surrendered his independent judgment to special interest or partisan political groups or used the schools for personal gain or for the gain of friends. The Commission finds that there is no inherent conflict with N.J.S.A. 18A:12-24.1(f) in holding the position of municipal prosecutor in one of the four municipalities that comprise the District while at the same time holding the position of President of the Board. The Commission notes that a conflict can possibly arise should a matter come before the Board involving any circumstances or parties that Dr. Meyerson may have had dealings with in his position as municipal prosecutor. However, in such circumstances, Dr. Meyerson can cure the conflict by recusing from the matter when it comes before the Board. As noted before, there is no allegation, nor is there evidence that Dr. Meyerson surrendered his 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 finds no probable cause to credit the allegation that Dr. Meyerson violated N.J.S.A. 18A:12-24.1(f), by holding the position of municipal prosecutor in one of the four municipalities that comprise the District while at the same time holding the position of President of the Board.

### **3. “It’s Your Life 411” Directory**

The complainant alleges that Board members, Dr. Meyerson, Mr. Siegel and Mr. Steinfeld violated N.J.S.A. 18A:12-24.1, 18A:12-25 and 26 when they solicited business from parents, students and taxpayers in a resource directory for the program “It’s Your Life 411.” Initially, the Commission notes that the complainant has not alleged that the Board members failed to file or failed to disclose information on their disclosure statements related to this allegation. Therefore, the Commission finds no probable cause to credit the allegation that Dr. Meyerson, Mr. Siegel and Mr. Steinfeld violated N.J.S.A. 18A:12-25 and 26 in relation to the resource directory.

The complainant did not indicate which subsection of N.J.S.A. 18A:12-24.1 that he believed was violated by Dr. Meyerson, Mr. Siegel and Mr. Steinfeld when they solicited business from parents, students and taxpayers in a resource directory for the program “It’s Your Life 411.” The Commission finds that the only subsection of N.J.S.A. 18A:12-24.1 that could apply to this allegation is N.J.S.A. 18A:12-24.1(f), which is set forth above. The evidence shows that on October 8, 2004, the Pascack Hills and Pascack Valley High Schools of the District presented the “It’s Your Life 411” program. Board members Dr. Meyerson, Mr. Siegel and Mr. Steinfeld all volunteered their services to the program. A program directory was created, which listed all of the participating agencies and their services. The program directory included a listing of the legal services provided by Dr. Meyerson, Mr. Siegel and Mr. Steinfeld. None of the Board members were aware that a directory was going to be created or that they would be listed in the directory. They were not involved in the creation of the directory and did not provide the information that was presented in the listing. They did not see the directory before it went out nor did they edit it. These facts show that Dr. Meyerson, Mr. Siegel and Mr. Steinfeld did not attempt to solicit business from parents, students and taxpayers through listing their services in the directory. They were not even aware that they were going to be listed in a directory. The evidence shows that they did not surrender their independent judgment or use the schools for personal gain. Based on the foregoing, the Commission finds no probable cause that Dr. Meyerson, Mr. Siegel and Mr. Steinfeld violated N.J.S.A. 18A:12-24.1(f), when the program directory included a listing of the legal services they provided.

### **4. Dance Team**

The complainant alleges that both Dr. Meyerson and Dr. Golin violated N.J.S.A. 18A:12-24, 24.1, 25, 26 and 27 when they included dancing in the school curriculum because their daughters liked it. The Commission notes that, for this and all other allegations where the complainant claims a violation of N.J.S.A. 18A:12-27, this is not a provision that can be violated by a school official. The provision establishes the School Ethics Commission including its membership, term vacancy and chairperson; it does not provide standards or rules that must be followed by school officials. Therefore, the Commission finds no probable cause to credit any of the allegations where the complainant alleges that N.J.S.A. 18A:12-27 was violated.

The Commission notes that the complainant has not alleged, nor is there evidence, that Dr. Meyerson and Dr. Golin failed to file or failed to disclose information on their disclosure statements related to the girls' dance team. Therefore, the Commission finds no probable cause to credit the allegation that Dr. Meyerson and Dr. Golin violated N.J.S.A. 18A:12-25 and 26 in relation to the dance team.

The complainant did not indicate which subsections of N.J.S.A. 18A:12-24 and 24.1 that he believed were violated by Dr. Meyerson and Dr. Golin in relation to the dance team. The complainant did not present any evidence supporting a violation of N.J.S.A. 18A:12-24.1. The evidence presented by the respondents' shows that the District had a dance team as an extracurricular activity before Dr. Meyerson and Mr. Golin were elected to the Board. On October 4, 2004, the Board voted to approve the fall/winter 2004-2005 athletic appointments of the dance team head coach. Dr. Meyerson's and Mr. Golin's daughters participate in the dance team. Based on this evidence, the Commission cannot find a violation of N.J.S.A. 18A:12-24.1. It is within the authority of the Board to establish extracurricular activities for the District. As students in the district, the children of Dr. Meyerson and Dr. Golin have a right to participate in extracurricular activities established by the Board. Therefore, the Commission finds no probable cause to credit the allegation that Dr. Meyerson and Dr. Golin violated N.J.S.A. 18A:12-24.1 in relation to the dance team.

### **5 and 7. No-Bid Contracts**

The complainant alleges that the Board violated N.J.S.A. 18A:12-24.1, 25, 26, 27, and 28 when it failed to obtain bids on multimillion dollar contracts that require bids. He further alleges that the contracts were awarded to friends and the companies that were awarded the contracts have inflated the costs. As noted above, the Commission finds no probable cause to credit any of the allegations where the complainant alleges that N.J.S.A. 18A:12-27 was violated. The Commission further notes that N.J.S.A. 18A:12-28 is not a provision that can be violated by a school official. This provision establishes the powers of the Commission, a use immunity for testimony, and the process for the appointment of employees and staff and reporting to the Attorney General. Therefore, the Commission finds no probable cause that the Board violated N.J.S.A. 18A:12-28 in relation to the award of contracts.

The Commission notes that the complainant has not alleged, nor is there evidence, that the Board failed to file or failed to disclose information on their disclosure statements related to the award of contracts. Therefore, the Commission finds no probable cause to credit the allegation that the Board violated N.J.S.A. 18A:12-25 and 26 in relation to the award of contracts.

The complainant did not indicate which subsection of N.J.S.A. 18A:12-24.1 that he believed was violated by the Board in the award of no-bid contracts. The Commission finds that the applicable subsection is N.J.S.A. 18A:12-24.1(a), which provides:



I will uphold and enforce all laws, rules and regulations of the State Board of Education and court orders pertaining to the schools. Desired changes shall be brought about only through legal and ethical procedures.

The Commission notes that there was no evidence to show that the contracts referenced by the complainant were required to be sent out for a bid. There was also no evidence to dispute the respondent's answer that the contracts referenced by the complainant were contracts that did not require bids pursuant to the professional services and extraordinary unspecifiable services exceptions to the bidding laws at N.J.S.A. 18A:18A-5. Therefore, even if the Commission had jurisdiction to determine whether a violation of N.J.S.A. 18A:18A occurred, the information presented would appear to show that the contracts were not required to be bid because they fell within the professional services and extraordinary unspecifiable services exceptions to the bidding laws at N.J.S.A. 18A:18A-5. Thus, the Board did not fail to uphold and enforce all laws, rules and regulations of the State Board of Education, and court orders pertaining to the schools. There is no information to suggest that the Board failed to bring about desired changes through legal and ethical procedures. Therefore, the Commission finds no probable cause to credit the allegation that the Board violated N.J.S.A. 18A:12-24.1(a) in the award of no-bid contracts.

## **6. Demographic Study**

The complainant alleges that the Board violated N.J.S.A. 18A:12-24.1, 25, 26 and 27 because the demographic study's projected student population for 2005 is wrong. The Commission notes that the demographic study was used as a basis for a referendum that was approved by the Board on December 2002. The evidence shows that the complainant sent numerous letters to the Board regarding the demographic study starting in early 2002. Therefore, the complainant had notice of the demographic study since early 2002. N.J.A.C. 6A:28-6.1(b) provides that all complaints must be filed within one year of notice of the alleged violation. Therefore, the Commission dismisses this allegation because it was not filed with the Commission within one year of complainant's notice of the demographic study.

## **8. Purchase of Artificial Turf**

The complainant alleges that the Board is considering using surplus money from a referendum to buy artificial turf when acquisition of the artificial turf was not included in the referendum. The complainant failed to indicate which provision of the Act was violated by this conduct. The Commission can find no provision of the Act which applies to this allegation. The Commission notes that the referendum was defeated and it would be impossible for the Board to use surplus money from a defeated referendum. Therefore, the Commission dismisses this allegation.

## **9 and 10. OPRA**

The complainant alleges that Dr. Meyerson, Mr. Siegel, Ms. Politi, Ms. Ellis, Ms. Gordon, Dr. Occhino and Mr. Hall have violated OPRA and N.J.S.A. 18A:12-24 and 29 because they gang up on dissenters when they ask for accountable spending. The complainant also alleges that the administration and the Board withhold information in violation of OPRA. The Commission does not have jurisdiction to make any determinations regarding OPRA, rather the Government Records Council, pursuant to N.J.S.A. 47:1A-7, has jurisdiction over such complaints.

The Commission notes that N.J.S.A. 18A:12-29 is not a provision that can be violated by a school official. This provision establishes the process for the filing, notification, hearing and determination of complaints. It also establishes the appeal process and the process for finding a complaint frivolous. Therefore, the Commission finds no probable cause that the Board violated N.J.S.A. 18A:12-29 in relation to the award of contracts.

The complainant did not indicate which subsection of N.J.S.A. 18A:12-24.1 that he believed was violated by Dr. Meyerson, Mr. Siegel, Ms. Politi, Ms. Ellis, Ms. Gordon, Dr. Occhino and Mr. Hall when they gang up on dissenters who ask for accountable spending. Furthermore, the complainant did not provide any evidence to show that the Board members gang up on dissenters. The complainant asked that the Commission review minutes from 10 years of Board meetings; however, without some indication of the dates on which the conduct occurred, the request was impractical. Further, as set forth above, complainant has the burden of proving factually the allegations under the Code of Ethics. Therefore, the Commission finds no probable cause to credit the allegation that Dr. Meyerson, Mr. Siegel, Ms. Politi, Ms. Ellis, Ms. Gordon, Dr. Occhino and Mr. Hall violated N.J.S.A. 18A:12-24.1.

#### **11. Informational Meeting on S-1701**

The complainant alleges that Dr. Tantillo insults taxpayers because he sent a mailing to all households with children telling them to call, write and ask for repeal of S-1701, but did not send the mailing to households without children. The complainant failed to indicate which provision of the Act was violated by this conduct. The Commission notes that the facts show that the District sent mailers to households with children attending school to inform the parents that an informational meeting was being conducted by the NJSBA on the impact of S-1701. The meeting was also publicized in the local newspaper. The meeting was open to the public and state Legislators were present to answer questions from the public. The Commission can find no provision of the Act which applies to this allegation. Therefore, the Commission finds no probable cause and dismisses this allegation.

#### **DECISION**

For the reasons expressed above, the Commission finds no probable cause to credit the allegations that respondents violated the School Ethics Act and dismisses the allegations against them.

## **REQUEST FOR SANCTIONS**

Respondent has asked 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]

Based on the pleadings, it is clear that the complainant believed that the Act had been violated. The Commission can find no evidence that the complaint was filed in bad faith solely for the purpose of harassment, delay or malicious injury. Further, complainant had insufficient information from which to conclude that his complaints did not constitute a violation of the Act. For the foregoing reasons, the Commission finds that the complaint was not frivolous and denies the respondents' request for sanctions against the complainant.

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).

Robert W. Bender  
Acting Chairperson

### **Resolution Adopting Decision – C07-05**

**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 finds no probable cause to credit the allegations that Respondents violated N.J.S.A. 18A:12-21 et seq.; 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 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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Robert W. Bender, Acting Chairperson

I hereby certify that the Resolution was duly adopted by the School Ethics Commission at its public meeting on October 25, 2005.\*

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Lisa James-Beavers  
Executive Director

\*Chairperson, Paul C. Garbarini abstained from this matter.

PCG/LJB/MET/ethics/decisions/C07-05