



Librera to the State Board of Education. N.J.S.A. 18A:7A-35(a). Additionally, the respondents raised the affirmative defense of untimeliness in their answers, pursuant to N.J.A.C. 6A:28-6.1(b).

As a threshold issue, the attorneys for the respondents raised before the Commission the issue of the untimeliness of the complaint. Counsel argued that the complaint was filed more than two years after the appointments took place. The regulation governing the filing of complaints before the Commission is clear in that a complaint must be filed within one year of notice of the alleged violation. Counsel argued that there was no reason to assume that the complainants did not have access to the information at the time of the appointments in 2005. The Board meetings are televised locally. The documents submitted in accordance with the complaint were accessible on the internet. The facts which form the basis of the complaint were not hidden from the public. Thus, counsel urged the Commission to dismiss the complaint as time-barred.

Ms. Rogers was sworn in and the Commission heard testimony solely on the issue of timeliness. Ms. Rogers testified that she was born and raised in Paterson and was living there in 2005 when the appointments took place. However, she testified that she had not taken an active role in District issues until her son went to school. She attended a school board meeting in May 2007 and later did some research. Ms. Rogers testified that she was aware that the meetings were public and were televised. She would see the meetings as she “flipped through the channels,” but did not focus on them. Ms. Rogers also acknowledged that she has a computer.

The Commission requested that the parties leave the room to allow it to deliberate. After discussion, the Commission determined to dismiss the complaint as untimely, pursuant to N.J.A.C. 6A:28-6.1(b). Accordingly, the Commission did not reach to the merits of the matter.

## **ANALYSIS**

The Commission initially notes that, pursuant to N.J.A.C. 6A:28-6.1(b), “[a]ll complaints must be filed within one year of notice of the alleged violation.” On this record, there is no dispute that the events which formed the basis of the complaint were available to the public as early as 2005. Indeed, the documents appended to the complaint confirm that Dr. Glascoe was appointed in July 2005 and Dr. Rush was appointed in November 2005. Ms. Rogers did not deny that she had access to this information in 2005.

The Commission recognizes that limitation periods of the type herein serve to discourage dilatoriness and provide a measure of repose in the conduct of school affairs. Kaprow v. Berkley Township Bd. of Educ., 131 N.J. 571, 587 (1993). Thus, “notice of the alleged violation” must be interpreted in a manner that anticipates the reasonable diligence of the complainant(s). Even recognizing that a matter such as this is brought in the public’s interest and not to adjudicate the rights of the complainants, see In the Matter of Frank Pannucci, Board of Education of Brick Township, Ocean County, State Board of Education, March 1, 2000, slip. op. at p. 9, the Commission must balance this public

interest against the important policy of repose and a respondent's right to fairness. Here, the complainants merely state that they "became aware of this violation of the School Ethics Act on May 23, 2007." (Complaint at page 2) Absent any indication that the facts as alleged by the complainants were unavailable or otherwise concealed from them, see, Reilly v. Brice, 109 N.J. 555, 559 (1998), the Commission finds that the complaint is untimely pursuant to N.J.A.C. 6A:28-6.1(b) and it will not reach to the merits of the case. As such, the Commission is mindful that the time limitations set forth in the regulations must be enforced if it is to operate in a fair and consistent manner. Philips v. Streckenbein et al., Edgewater Park Bd. of Educ., C19-03 (June 24, 2003).

## **DECISION**

For the foregoing reasons, the Commission dismisses the complaint as time-barred. 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 – C36-07**

**Whereas**, the School Ethics Commission has considered the pleadings filed by the parties, the documents submitted in support thereof, the testimony and the information obtained from its investigation; and

**Whereas**, at its meeting of July 22, 2008, the Commission found that the complaint was untimely filed pursuant to N.J.A.C. 6A:28-6.1(b); and

**Whereas**, the Commission directed its staff to prepare a decision consistent with the aforementioned conclusion; and

**Whereas**, the Commission has reviewed the decision and agrees with the decision;

**Now Therefore Be It Resolved**, that the Commission hereby adopts the proposed decision referenced as its 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 this Resolution was duly adopted by the School Ethics Commission at its public meeting on August 26, 2008.

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Joanne Boyle, Executive Director  
School Ethics Commission

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\* Commissioner Robert Copeland neither participated in the discussion nor the Commission's vote on this matter.