

BARBARA J. DELUNA	:	BEFORE THE SCHOOL
	:	ETHICS COMMISSION
v.	:	Docket No. C31-06
MICHAEL R. BERTRAM AND	:	DECISION
SETH Y. JOHNSON	:	
<i>DENVILLE BOARD OF EDUCATION</i>	:	
<i>MORRIS COUNTY</i>	:	

PROCEDURAL HISTORY

This matter arises from a complaint filed on July 11, 2006 by Barbara J. DeLuna alleging that Michael R. Bertram and Seth Y. Johnson, both members of the Denville Board of Education (Board) violated the School Ethics Act (Act), N.J.S.A. 18A:12-21 et seq. Complainant first alleges that both respondents violated N.J.S.A. 18A:12-24(c) because they participated in the Denville School District (District) support staff contract negotiations after they had both been endorsed by the local education association which represents the support staff. The complainant’s second allegation is that Mr. Bertram violated N.J.S.A. 18A:12-24(b) and (e) when he initiated a “mass calling” from the school to the homes of most students wherein he introduced himself as Board President, stated that the call was to check phones for future emergencies and then reminded everyone to vote the next day in the school elections. The complainant’s third allegation is that Mr. Bertram violated N.J.S.A. 19:34-25(g) in relation to a PTA raffle encouraging parents to vote in the school elections. The complainant’s fourth allegation is that Mr. Bertram violated N.J.S.A. 18A:12-24(a) and (d) because of his active memberships in the Statewide Parent Advocacy Network, (SPAN) and the Supportive Parents Advocating for our Kids (SPARK). The complainant’s fifth allegation is that Mr. Bertram violated N.J.S.A. 18A:12-24(i) when he initiated a censure against fellow Board member, James C. DeChesare, and then leaked executive session information to the press in an attempt to affect Mr. DeChesare’s re-election campaign. The complainant’s sixth and final allegation is that Mr. Bertram violated N.J.S.A. 18A:12-24.1(e) of the Code of Ethics for School Board Members when he physically prevented Mr. DeChesare from entering a meeting of the Long Range Educational Planning Committee (Committee), when he requested that Mr. DeChesare not be reimbursed for a Board course, when he purposefully did not invite Mr. DeChesare to a politically timed press walk-through of the District’s facilities, and when he excluded Mr. DeChesare from an executive session of the Board.

For good cause shown, the respondents were granted an extension to file an answer. The respondents’, through their attorney, Kevin K. Gallaway, Esquire, filed an answer wherein they denied the allegations in the first, second, fourth and fifth counts. The respondent, Michael R. Bertram further answered that the allegations of the third and sixth count failed to state a cognizable claim or a claim on which relief could be granted. The respondents also requested that the Commission find the complaint frivolous and fine the complainant pursuant to N.J.S.A. 18A:12-29(b).

The Commission invited, but did not require, the parties to attend its January 23, 2007 meeting. The parties were advised of their right to bring counsel and witnesses. The complainant attended the hearing and testified before the Commission. The complainant's witness, Mr. DeChesare, also testified before the Commission. The respondents attended the hearing with their attorney, Joseph J. Fritzen, and they both testified before the Commission. After the complainant's testimony, Mr. Fritzen moved to dismiss the allegations against Mr. Johnson. After deliberations, the Commission advised the parties that it reserved the right to make a decision on the motion until after the testimony. The Commission also notified the parties that it did not have jurisdiction to make a determination regarding count three and dismissed that allegation. During the public portion of the January 23, 2007 meeting, the Commission voted to table the matter to obtain additional information. The matter was scheduled for the Commission's March 27, 2007 meeting for a final determination. At the public portion of the March 27, 2007 meeting, the Commission voted to find no probable cause to credit the allegations that the respondents violated N.J.S.A. 18A:12-24(a), (b), (c), (d) (e) and (i) and N.J.S.A. 18A:12-24.1(e) of the Code of Ethics for School Board Members and the matter was dismissed. At its April 24, 2006 meeting, the Commission voted to find that the complaint was not frivolous and adopted this decision.

FACTS

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

At all times relevant to the complaint, Mr. Michael Bertram and Mr. Seth Johnson were members of the Board. The complainant's witness, Mr. DeChesare, served on the Board from April 2003 until April 2006. The complainant was the running mate of Mr. DeChesare in the April 2006 school elections and both were not elected to the Board. The respondent, Mr. Bertram, became President of the Board in January 2006.

Negotiations

Both respondents were endorsed by the local education association's political action committee, Mr. Johnson during the April 2005 school elections and Mr. Bertram in the April 2006 elections. Mr. Johnson certified that he did not participate in negotiations until one year after his endorsement. Mr. Bertram certified and testified that he did not participate in negotiations since being endorsed by the local education association. Mr. Bertram testified that he physically leaves the room during discussions of the negotiations. The complainant testified that she believed Mr. Johnson when he certified that he did not participate in negotiations, but that she did not believe Mr. Bertram when he certified that he did not participate in negotiations.

Testing of Community Notification System

On April 17, 2006, the District was permitted a free demonstration of a computerized telephone system. Mr. Bertram testified that it was like a reverse 911 system. Mr. Bertram testified that the interim superintendent and the business administrator were at a meeting on April 17, 2006. He further testified that both the District's secretary and technology specialist did not want to test the system, so he agreed to test the system. Following is the text of the announcement read by Mr. Bertram on April 17, 2006, the day before the school elections:

“Good Morning. I am Michael Bertram, President of the Denville Board of Education and this is a test of a community notification system. This system would be used to notify you of school closings, early dismissals, emergencies and information relating to school activities. There will be more information in a coming Friday folder as well as an opportunity to update the phone numbers you have provided the schools. Tomorrow is Tuesday, April 18th, the day of the school elections. The polls are open 7 a.m. to 9 p.m. Please remember to vote. Thank you.”

There was no follow up information provided regarding the test of the community notification system and the District has never acquired a community notification system.

Special Education Groups

Mr. Bertram is a member of SPAN and SPARK, which are organizations advocating for special education. During the March 20, 2006 Board meeting, someone in the audience asked about the high cost of the special education program and Mr. Bertram answered that the Individual Education Plans mandate the special education expenditures. Mr. Bertram then stated that for those voting against the budget, they will be cutting such things as busing and after school programs. Mr. Bertram testified that the complainant asked him if the budget was defeated how that would affect the costs of special education. Mr. Bertram testified that he told the complainant that the defeat of the budget would not impact special education services. Mr. Bertram testified that he recused himself from all matter related to SPAN and SPARK.

Censure

At the September 12, 2005 Board's executive session, Mr. Bertram moved to approve a resolution censuring Mr. DeChesare. The resolution of censure was approved by a vote of five to one with Mr. DeChesare voting no. The Board's resolution indicated that Mr. DeChesare was censured because he contacted the Office of Civil Rights, the New Jersey Education Association and the Morris County Superintendent of Schools to advocate for a teacher that had an active employment-related legal action against the Board. The resolution further indicated that after the Board attorney advised Mr. DeChesare that he should not act on the teacher's behalf, Mr. DeChesare continued to advocate for the teacher with respect to the employment-related legal action. The

resolution of censure indicated that the Board had determined that Mr. DeChesare had violated the New Jersey School Board Code of Ethics. This resolution of censure was not made public at the September 12, 2005 executive session. Mr. DeChesare testified that he did not advocate for the teacher, but that he did his own investigation of the matter in an attempt to gather information about one of his constituents. Mr. Johnson testified that the Board told Mr. DeChesare that if he continued advocating for the teacher that the censure would be made public. On January 24, 2006, Mr. DeChesare wrote a letter to the attorney representing the teacher, which enclosed a letter written on the teacher's behalf. In the cover letter, Mr. DeChesare wrote, "I hope this one will be O.K. If not let me know and I'll write a different one." Mr. Johnson also testified that at the February 13, 2006 executive session, the Board discussed a confidential document regarding the teacher, which the teacher had obtained. The document contained confidential Board information and the Board believed that Mr. DeChesare gave the letter to the teacher because he advocated for her and lived next door to her. At the February 13, 2006 Board's executive session, Mr. Bertram moved to release the September 12, 2005 censure against Mr. DeChesare, which was approved by a vote of four to one with Mr. DeChesare voting no. Mr. Bertram testified that after the February 13, 2006 meeting, he received a call from a reporter with questions regarding the censure. Mr. Bertram testified that he answered the reporter's questions because the censure had been made public.

Mr. DeChesare

At a committee meeting, Mr. Bertram denied Mr. DeChesare entry to the meeting. Mr. DeChesare testified that Mr. Bertram physically prevented him from attending the Committee meeting. Mr. DeChesare was not a member of the committee. Mr. Bertram was chairperson of the Committee. Mr. Bertram certified that the decision to deny Mr. DeChesare appointment to the committee had been made before Mr. Bertram became a member of the Board. Mr. Bertram admitted that he denied Mr. DeChesare entry to the meeting, but denied that he used physical force.

Mr. DeChesare was not reimbursed for a Board training course. The complainant alleges that this denial came from Mr. Bertram as Board President. Mr. Bertram certified that Mr. DeChesare did not obtain Board approval prior to attending the course. He further certified that he had told Mr. DeChesare that all requests to attend any course had to be approved by the Board in advance.

The complainant alleges that Mr. DeChesare was purposely not invited to a press walk-through of the facilities. Mr. Bertram certified that no one from the Board attended the walk-through other than the Board President as spokesperson for the Board. Mr. Bertram was the Board President at the time. Mr. DeChesare has been excluded from executive sessions at the advice of Board counsel.

ANALYSIS

The Commission notes that, in this analysis, it will not address the complainant's allegation that Mr. Bertram violated N.J.S.A. 19:34-25(g) because that allegation was dismissed because the Commission did not have jurisdiction to determine whether Title 19 was violated..

The Commission will next address the respondent's motion to dismiss the allegations against Mr. Johnson. The complainant alleged that Mr. Johnson violated N.J.S.A. 18A:12-24(c) when he participated in the District support staff contract negotiations after he had been endorsed by the local education association which represents the support staff. The Commission notes that the complainant testified that she believed Mr. Johnson when he certified that he did not participate in negotiations until one year after his endorsement. Because the complainant has conceded that Mr. Johnson did not participate in negotiations as originally alleged, the Commission finds no probable cause to credit the allegation that Mr. Johnson violated N.J.S.A. 18A:12-24(c) and dismisses this allegation.

Negotiations

The complainant alleges that Mr. Bertram violated N.J.S.A. 18A:12-24(c) when he participated in the District support staff contract negotiations after he had been endorsed by the local education association which represents the support staff. N.J.S.A. 18A:12-24(c) provides:

No school official shall act in his official capacity in any matter where he, a member of his immediate family, or a business organization in which he has an interest, has a direct or indirect financial involvement that might reasonably be expected to impair his objectivity or independence of judgment. No school official shall act in his official capacity in any matter where he or a member of his immediate family has a personal involvement that is or creates some benefit to the school official or member of his immediate family;

The facts show that Mr. Bertram was re-elected in April 2006 and endorsed by the local education association in March 2006. Mr. Bertram testified that he did not participate in negotiations after the endorsement. He further testified that he physically leaves the room during discussions of the negotiations. While the complainant testified that she did not believe Mr. Bertram, the Commission finds his testimony credible. There is no evidence to show that Mr. Bertram participated in negotiations after the endorsement. Therefore, the Commission finds no probable cause to credit the allegations that Mr. Bertram violated N.J.S.A. 18A:12-24(c) and dismisses this allegation.

Testing of Community Notification System

The complainant alleges that Mr. Bertram violated N.J.S.A. 18A:12-24(b) and (e) when, on April 17, 2006, he initiated a “mass calling” from the school to the homes of most students wherein he introduced himself as Board President, stated that the call was to check phones for future emergencies and then reminded everyone to vote the next day in the school elections. N.J.S.A. 18A:12-24(b) provides:

No school official shall use or attempt to use his official position to secure unwarranted privileges, advantages or employment for himself, members of his immediate family or others;

To find a violation of N.J.S.A. 18A:12-24(b), the Commission must determine if Mr. Bertram used his official position to secure an unwarranted privilege or advantage for himself when, as Board President, he tested a community notification system. The facts show that, on April 17, 2006, the District was provided with an opportunity for a free demonstration of a computerized telephone system. The facts also show that the interim superintendent and the business administrator were at a meeting on April 17, 2006. Mr. Bertram testified that both the District’s secretary and technology specialist did not want to test the system and Mr. Bertram agreed to test the system. The text of the announcement read by Mr. Bertram indicated that it was a test of a community notification system, it indicated what the system might be used for, that there would be a follow up to the test, that the next day was the day of the school elections and reminded everyone to vote. The complainant argues that this was a misuse of authority and school resources to aid Mr. Bertram in his campaign. The Commission notes that school resources are not at issue in this matter because the test was a free demonstration of a community notification system and no school resources were used.

The Commission finds that Mr. Bertram was acting in his official position of Board President to test the community notification system because in the announcement he identified himself as President of the Board. The Commission must next determine if Mr. Bertram’s use of his position as Board President in the announcement gave him an unwarranted privilege or advantage. The Commission is aware that, in other districts that have a community notification system, it is common practice for board presidents to make school announcements through the community notification system. The Commission notes that, at the time of the announcement, Mr. Bertram was running in the school elections for re-election to the Board. However, the Commission also notes that the announcement only provided school-related information, which included a reminder to vote in the school elections. The announcement did not include information that Mr. Bertram was running for re-election nor did Mr. Bertram attempt to influence the vote. He merely mentioned that the next day was the day of school elections and reminded everyone to vote in those elections. The Commission finds that Mr. Bertram did not gain or attempt to gain an unwarranted privilege or an advantage in the school elections by making the announcement testing a community notification system. Therefore, the Commission finds no probable cause to credit the allegation that

Mr. Bertram violated N.J.S.A. 18A:12-24(b) when he made an announcement testing a community notification system and dismisses this allegation.

N.J.S.A. 18A:12-24(e) provides:

No school official, or member of his immediate family, or business organization in which he has an interest, shall solicit or accept any gift, favor, loan, political contribution, service, promise of future employment, or other thing of value based upon an understanding that the gift, favor, loan, contribution, service, promise, or other thing of value was given or offered for the purpose of influencing him, directly or indirectly, in the discharge of his official duties. This provision shall not apply to the solicitation or acceptance of contributions to the campaign of an announced candidate for elective public office, if the school official has no knowledge or reason to believe that the campaign contribution, if accepted, was given with the intent to influence the school official in the discharge of his official duties;

To find a violation of N.J.S.A. 18A:12-24(e), the Commission must determine if Mr. Bertram solicited or accepted any gift, favor, loan, political contribution, service, promise of future employment, or other thing of value based upon an understanding that the gift, favor, loan, contribution, service, promise, or other thing of value was given or offered for the purpose of influencing him, directly or indirectly, in the discharge of his official duties. There is no evidence to show that Mr. Bertram solicited a free demonstration of a community notification system based on an understanding that the test of the system was offered to influence Mr. Bertram in the discharge of his official duties. Rather, the facts show that the District did not purchase the community notification system that Mr. Bertram tested. Therefore, the Commission finds no probable cause to credit the allegation that Mr. Bertram violated N.J.S.A. 18A:12-24(e) when he made an announcement testing a community notification system and dismisses this allegation.

Special Education Groups

The complainant alleges that Mr. Bertram violated N.J.S.A. 18A:12-24(a) and (d) because of his active memberships in SPAN and SPARK. N.J.S.A. 18A:12-24(a) provides:

No school official or member of his immediate family shall have an interest in a business organization or engage in any business, transaction, or professional activity, which is in substantial conflict with the proper discharge of his duties in the public interest;

Because SPAN and SPARK are not business organizations, to find a violation of N.J.S.A. 18A:12-24(a), the Commission must determine if there is a “substantial conflict” between Mr. Bertram’s duties as a Board member and his membership in SPAN and SPARK. The Commission has addressed this issue previously in *Advisory Opinion A16-*

04, (July 27, 2004). In *A16-04*, the Commission advised a board member that service as a co-facilitator of a Special Education Parent Discussion Group (SPED) did not create a “substantial conflict” with the proper discharge of the board member’s duties in the public interest. *Id.* page 3. The Commission reaffirms its advice in *A16-04*, and finds that Mr. Bertram’s memberships in SPAN and SPARK do not create a “substantial conflict” with the proper discharge of his Board member duties in the public interest. Therefore, the Commission finds no probable cause to credit the allegations that Mr. Bertram violated N.J.S.A. 18A:12-24(a) because of his membership in SPAN and SPARK while serving as Board President and dismisses this allegation.

N.J.S.A. 18A:12-24(d) provides:

No school official shall undertake any employment or service, whether compensated or not, which might reasonably be expected to prejudice his independence of judgment in the exercise of his official duties;

To find a violation of N.J.S.A. 18A:12-24(d), the Commission would have to find that Mr. Bertram’s memberships in SPAN and SPARK would reasonably be expected to prejudice his independence of judgment in the exercise of his official Board member duties. Mr. Bertram testified that he recuses himself from matters related to SPAN and SPARK. The complainant maintains that Mr. Bertram has not demonstrated his objectivity or independence of judgment regarding special education matters because he has commented on special education matters as they relate to the budget. The Commission notes that Mr. Bertram’s comments about special education and its relation to the budget were general comments in response to questions from the public. The Commission does not believe that this demonstrates that Mr. Bertram’s independence of judgment regarding special education matters is prejudiced. Previously, in *Advisory Opinion A07-00*, (May 23, 2000), the Commission advised a board member that she or he would not violate the Act if she or he served as President of the local Parent Teachers’ Association (PTA) in the same district. The Commission found that the roles of PTA President and board member were compatible. *Id.* page 2. The Commission also found that it would not be reasonable to expect that the board member’s role as President of the PTA would prejudice the board member’s independence of judgment in the exercise of her or his duties. *Id.* page 2. This matter is similar to the matter in *A07-00*, except that Mr. Bertram’s memberships in SPAN and SPARK are not as significant as the board member’s role in *A07-00* as President of the PTA. The Commission reaffirms its advice in *A07-00* and finds that it is not reasonable to expect that Mr. Bertram’s memberships in SPAN and SPARK would prejudice his independence of judgment in the exercise of his official duties. Therefore, the Commission finds no probable cause to credit the allegation that Mr. Bertram violated N.J.S.A. 18A:12-24(d) because of his memberships in SPAN and SPARK and dismisses this allegation.

Censure

The complainant alleges that Mr. Bertram violated N.J.S.A. 18A:12-24(i) when he initiated a censure against Mr. DeChesare and then leaked executive session

information to the press in an attempt to affect Mr. DeChesare's re-election campaign. N.J.S.A. 18A:12-24(i) provides:

No elected member shall be prohibited from making an inquiry for information on behalf of a constituent, if no fee, reward or other thing of value is promised to, given to or accepted by the member or a member of his immediate family, whether directly or indirectly, in return therefore;

The facts show that the September 12, 2005 resolution of censure of Mr. DeChesare passed by a vote of five to one with Mr. DeChesare casting the only no vote. While Mr. Bertram moved the resolution of censure, it was the Board that censured Mr. DeChesare because of his activities in advocating for a teacher that had an active employment related legal action against the Board. The facts show that Mr. DeChesare did more than seek information on behalf of a constituent. His January 24, 2006 letter to the attorney representing the teacher shows that he was advocating on the teacher's behalf and would do whatever he could to help the teacher. That letter was written well after Mr. DeChesare had been censured and warned that if he continued to advocate for the teacher, the censure would be made public. The facts do not confirm complainant's contention that Mr. Bertram leaked the censure to the press in an attempt to affect Mr. DeChesare's re-election campaign. The facts show that at the February 13, 2006 Board executive session the Board voted to make the resolution public. After that session a reporter called Mr. Bertram and he answered the reporter's questions regarding the censure. Based on the foregoing, the Commission finds that Mr. Bertram did not prohibit Mr. DeChesare from making an inquiry for information on behalf of a constituent. Therefore, the Commission finds no probable cause to credit the allegation that Mr. Bertram violated N.J.S.A. 18A:12-24(i) in relation to the Board's censure of Mr. DeChesare and dismisses this allegation.

The Commission is concerned that the Board took it upon themselves to determine that a fellow Board member had violated the Code of Ethics for School Board Members set forth at N.J.S.A. 18A:12-24.1, and then discipline that board member based on its determination. While boards of education have the right to enforce their own policies, the Commission has sole authority to determine if the Code of Ethics for School Board Members, N.J.S.A. 18A:12-24.1, has been violated. However, even the Commission does not have the authority to impose discipline on a board member who has violated the Code of Ethics for School Board Members. That jurisdiction lies with the Commissioner of Education to whom the Commission makes a recommendation regarding the discipline of a school board member. The Commission cautions the Board that, in the future, if the Board suspects that the Code of Ethics for School Board Members has been violated, then a complaint should be filed with the Commission and the Board should not make its own determination that a violation has incurred and impose discipline.

Mr. DeChesare

The complainant alleges that Mr. Bertram violated N.J.S.A. 18A:12-24.1(e) of the Code of Ethics for School Board Members when he physically prevented Mr. DeChesare from entering a meeting of the Committee, when he requested that Mr. DeChesare not be reimbursed for a Board course, when he purposefully did not invite Mr. DeChesare to a politically timed press walk-through of the District's facilities, and when he excluded Mr. DeChesare from an executive session of the Board. N.J.S.A. 18A:12-24.1(e) provides:

I will recognize that authority rests with the board of education and will make no personal promises nor take any private action that may compromise the board.

The Commission notes that, pursuant to N.J.S.A. 18A:12-29, the complainant bears the burden of factually proving any violations of the Code of Ethics for School Board Members. To prove that Mr. Bertram violated N.J.S.A. 18A:12-24.1(e) the complainant's witness testified that Mr. Bertram physically prevented him from attending the Committee meeting. Mr. Bertram testified that he denied Mr. DeChesare entry into the Committee meeting because Mr. DeChesare was not a member of the Committee. When Mr. Bertram denied Mr. DeChesare entry to the Committee meeting he did so in his capacity as chairperson of the Committee. Thus, he took Board action when he denied Mr. DeChesare entry. In Marc Sovelove v. Paul Breda, C49-05, (September 26, 2006), the Commission noted that Board action cannot be private action. Since Mr. Bertram took Board action when he denied Mr. DeChesare entry to the Committee meeting, the Commission cannot find that he took private action that may compromise the Board. Therefore, the Commission finds no probable cause to credit the allegation that Mr. Bertram violated N.J.S.A. 18A:12-24.1 (e) and dismisses this allegation.

The complainant next alleges that Mr. Bertram violated N.J.S.A. 18A:12-24.1(e) because he requested that Mr. DeChesare not be reimbursed for a Board course. However, the facts show that Mr. Bertram, in his role as Board President, told Mr. DeChesare that all requests to attend any course had to be approved by the Board in advance. This action was a Board action and the Commission cannot find that Mr. Bertram took private action that may have compromised the Board. Therefore, the Commission finds no probable cause to credit the allegation that Mr. Bertram violated N.J.S.A. 18A:12-24.1 (e) and dismisses this allegation.

The complainant next alleges that Mr. Bertram violated N.J.S.A. 18A:12-24.1(e) when he purposefully did not invite Mr. DeChesare to participate in a walk-through of the facilities. However, Mr. Bertram testified that no Board member was invited to take part in the walk-through and that he participated in the walk-through in his Board President role as spokesperson for the Board. This action was a Board action and the Commission cannot find that Mr. Bertram took private action that may have compromised the Board. Therefore, the Commission finds no probable cause to credit

the allegation that Mr. Bertram violated N.J.S.A. 18A:12-24.1(e) and dismisses this allegation.

Finally, the complainant alleges that Mr. Bertram violated N.J.S.A. 18A:12-24.1(e) when he excluded Mr. DeChesare from an executive session of the Board. The Commission notes that Mr. Bertram took Board action when he excluded Mr. DeChesare from an executive session of the Board based upon the advice of the Board attorney. Therefore, the Commission finds no probable cause to credit the allegation that Mr. Bertram violated N.J.S.A. 18A:12-24.1(e) and dismisses this allegation.

DECISION

For the reasons expressed above, the Commission finds no probable cause to credit the allegations that the 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]

The respondents do not provide any specific argument as to why the Commission should find that this complaint was frivolous. The Commission can find no evidence to show that the complainant filed the complaint in bad faith solely for the purpose of harassment, delay or malicious injury. The Commission also has no information to suggest that the complainant should have known that the complaint was without any reasonable basis in law or equity or that it could not be supported by a good faith argument for an extension, modification or reversal of existing law. For the foregoing reasons, the Commission finds that this complaint was not frivolous and denies the respondents' request for sanctions against the complainants.

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 – C31-06

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 the 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.

Paul C. Garbarini, Chairperson

I hereby certify that the Resolution
was duly adopted by the School
Ethics Commission at its public meeting
on April 24, 2007.

Lisa James-Beavers
Executive Director

PCG/LJB/MET/ethics/decisions/C31-06