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<b>PETER DIAZ,</b>	:	<b>BEFORE THE SCHOOL</b>
	:	<b>ETHICS COMMISSION</b>
<b>V.</b>	:	
	:	<b>Docket No.: C29-01</b>
<b>CLAYTON BARKER and the</b>	:	
<b>PASSAIC BOARD OF EDUCATION,</b>	:	<b>DECISION</b>
<b>PASSAIC COUNTY</b>	:	

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**PROCEDURAL HISTORY**

This matter arises from a complaint alleging that the Passaic Board of Education and Clayton Barker, a member of the Board, violated the School Ethics Act, N.J.S.A. 18A:12-21 et seq. when they allegedly voted not to appoint complainant for the position of head baseball coach for the district for political and racial considerations. Complainant did not allege any specific provision of the School Ethics Act that respondents violated.

Respondent, Clayton Barker, filed his answer to the complaint stating that he encouraged complainant to apply for the position of head baseball coach and that he never made any racial comments with respect to his applying for the position. Mr. Barker further asserts that he never attempted to interfere with the district’s hiring process. Mr. Barker denies that he violated any provision of the Act.

The Commission invited the parties to attend the Commission’s meeting on January 22, 2002, to present witnesses and testimony to aid in the Commission’s investigation. Both parties were present. Mr. Diaz appeared with counsel, Sheldon Pincus, Esq. and Mr. Barker appeared with counsel, Michael Koribanics, Esq.

During its public meeting on January 22, 2001, the Commission voted to dismiss the matter for lack of jurisdiction. The Commission directed its staff to prepare a decision for adoption at the next meeting. The Commission adopted this decision at its meeting on February 26, 2002.

**FACTS**

The Commission was able to discern the following facts on the basis of the pleadings, documents submitted and its investigation.

At all times material to this complaint, respondent Clayton Barker, was a member of the Passaic Board of Education and complainant, Peter Diaz, was a teaching staff member employed by the Board. Prior to the 2000-2001 school year, complainant coached the district’s Junior Varsity Baseball team. Throughout that period of time, Leonard Domino served as the school district’s Head Baseball Coach and coached the

district's Varsity Baseball team. At least once during the three years immediately preceding the 2000-2001 school year, Mr. Barker recommended that complainant apply for the Head Baseball Coach position. At the Commission's meeting on January 22, 2002, complainant testified that Mr. Barker encouraged him to apply for the position and stated "we need to get rid of that white guy", referring to Mr. Domino. Mr. Barker also testified at the Commission's January meeting and denied that he made any racial comments to complainant.

In or about June, 2000, the Board's Athletic Director determined not to renew Mr. Domino as the head baseball coach for the 2000-2001 school year. As a result of that determination, complainant applied for the position for the 2000-2001 school year in June 2000. Complainant testified that he submitted a timely application for the position and was interviewed in late July 2000. On or about September 26, 2000, Sam Ferretti was recommended to the Board for appointment.

Complainant appeared at the Board's meeting on September 26, 2000, during its public session and raised his concerns about the hiring process for the head baseball coach position and also made allegations that Mr. Barker's comments regarding the position had racial overtones.

On or about October 31, 2000, the Board voted to appoint Mr. Ferretti to the position of head baseball coach. Complainant testified that he attempted to get the school administration to investigate his allegations and to intervene, but that no action was taken.

## **ANALYSIS**

The issue before the Commission is whether the above facts establish that respondent's violated the School Ethics Act, N.J.S.A. 18A:12-21 et seq. when they allegedly voted not to appoint complainant for the position of head baseball coach for the district for political and racial considerations.

The Commission has determined that it cannot determine whether respondents violated the Act by voting not to appoint complainant to the head baseball coach position for political and racial considerations because it has concluded that matters concerning the alleged discriminatory hiring practices of a school district should be addressed by the district. The Commission, therefore, does not reach the issue of whether, if the conduct occurred, it constitutes a violation of the Act.

The Commission also notes that the district's grievance process has not been exhausted in this matter. At the Commission's meeting on January 22, 2002, complainant testified that he had taken affirmative steps to resolve the matter by contacting the Superintendent's office and reporting the conduct alleged, but that the matter had never been submitted to arbitration. The Commission has since been advised by the Passaic Department of Human Resources that the local Teacher's Association has filed a grievance with the district on behalf of the complainant and that the matter is

being held pending the decision of the Commission. The district further advised that upon the Commission's determination in the present case, the matter will proceed to arbitration. In light of the above, the Commission refers this matter back to the district for arbitration.

## **DECISION**

For the foregoing reasons, the Commission dismisses the complaint against respondents for lack of jurisdiction.

This decision is a final decision of an administrative agency. Therefore, it is appealable only to the Superior Court--Appellate Division.

Paul C. Garbarini  
Chairperson

**Resolution Adopting Decision - C29-01**

**Whereas**, the School Ethics Commission considered the pleadings, documents and the results of its investigation; and

**Whereas**, at its meeting of January 22, 2002, the Commission dismissed the matter for lack of jurisdiction; and

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

**Whereas**, the Commission agrees with the decision;

**Now Therefore Be It Resolved** that the Commission hereby adopts the decision 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 the School Ethics Commission adopted this decision at its public meeting on February 26, 2002.

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Jacqueline Richmond  
Acting Executive Director

[e:ethics/lisa/decisions(C29-01)]