



purpose that it be taken as a genuine record with intent to defraud the public.” (Id. at p. 7) The complainant asserts this to be a violation of N.J.S.A. 18A:12-24(b).

#### Allegation B: The Board Appointed Caputo to an Unauthorized Position

The complainant asserts that after serving as a Vice Principal from September 1, 1999 to June 30, 2000, on November 16, 2000, the Board promoted Caputo to the position of Executive Director of Facilities and School Safety although he did not hold the proper endorsement for this position. (Id. at pp. 8-9) The complainant alleges that by allowing Caputo to obtain an increased salary, “[t]he Board, [former Superintendent] Highton and [the Union representative] aided in the furtherance of the ongoing conspiracy to aid Caputo in obtaining public funds by false pretenses.” (Id. at p. 13) The complainant asserts this to be a violation of N.J.S.A. 18A:12-24(b).

#### Allegation C: Illegal Appointment as Assistant Superintendent

The complainant affirms that on April 23, 2003, the Board posted for a position of Assistant Superintendent in Charge of Personnel. The job posting required: (1) A Standard New Jersey Teaching Certificate; (2) Minimum of three (3) years educational and administrative or supervisory experience under a valid New Jersey Administrator or Supervisory Certificate and (3) Master’s Degree in Education. (Id. at p. 14; Exhibit 21) The complainant asserts that, although a certificate of eligibility for the school administrator’s endorsement was issued by the Department of Education to Mr. Caputo in June 2003, the regulations in effect at the time, N.J.A.C. 6:11-4.4, prohibited holders of certificates of eligibility from assuming responsibilities for job assignments until they had been issued a provisional certificate. (Id. at p. 16; Exhibit 24)

The complainant alleges that on July 1, 2003, the Board appointed Caputo as Assistant Superintendent of Human Resources and he immediately assumed the responsibilities of an Assistant Superintendent, such as signing for employment postings and signing tenure charges. However, according to the complainant, Mr. Caputo did not obtain his provisional certificate until March 2004. (Id. at pp. 17-19; Exhibit 34) Further, because the collective bargaining agreement for 2003 did not recognize the Assistant Superintendent’s position, the complainant asserts that the Board was required to enter into a contract to employ Mr. Caputo, but failed to do so until April 1, 2004. The complainant alleges this was an “intent to conceal” the July 1, 2003 appointment. (Id. at pp. 19-20) The complainant acknowledges that Mr. Caputo received his standard school administrator’s certificate in February 2005. (Id. at p. 20) He reasons that because the respondent mentored Mr. Caputo in 2004 during his residency (id. at p. 25) and allowed Caputo to assume his job responsibilities as Assistant Superintendent in July 2003 without proper certification, Sanger violated the public trust by securing unwarranted employment for Caputo in violation of N.J.S.A. 18A:12-24(b). (Id. at p. 35)

Allegation D: Certified Principals Who Acquired Principal Endorsements Prior to September 1, 1999 are Not Required to Complete a Residency Program

Here, the complainant merely cites to regulations governing licensing, but makes no specific allegations against the respondent and does not cite to a violation of the School Ethics Act. (Amendment to Complaint at pp. 40-43)

Allegation E: Caputo's Appointment as Director was Illegal.

The complainant contends that in 2000, the Board appointed Caputo to an unrecognized title (Executive Director) without obtaining approval from the County Superintendent. He does not make any allegations as to this respondent and does not cite to any violations of the Act. (Id. at pp. 43-44)

Allegation F: Sanger is Aiding and Abetting the Theft of Funds

The complainant repeats the facts relating to the issuance of Caputo's certificate of eligibility and provisional certificate, as set forth in Allegation C, above and asserts that in 2003:

Sanger was the school chief administrator responsible for making sure that newly-hired teaching staff members exhibit an appropriate certificate before the teaching staff member assumed any responsibilities for the performance of regulated duties. Sanger disregarded this regulation and allowed Caputo to benefit from about \$140,000.00 in unauthorized salary. (Id. at p. 46)

The complainant further charges that the respondent was involved in the making of the contract dated April 2004 (id. at p. 48) and has yet to "renounce his involvement in the conspiracy to secure unwarranted employment for Caputo." (Id. at p. 52) The complainant asserts this is a violation of N.J.S.A. 18A:12-24(b).

Allegation G: Sanger Secured Unwarranted Employment for Caputo

The complainant alleges that, in 2003, the respondent did not make the County Superintendent aware that "Caputo had not been provided with the proper certificate" to assume the position of Assistant Superintendent. (Second Amendment to Complaint at p. 56) This omission, according to the complainant, prevented the County Superintendent and the Commissioner of Education from intervening, thereby securing unwarranted employment for Caputo.

The complainant further contends that the respondent served as mentor for Caputo in 2004 by "hiding the fact that there was no official contract entered into by Caputo and the Board and for the term beginning July 1, 2003 and ending June 30, 2004, in violation of N.J.S.A. 18A:27-3." (Id. at pp. 56-57) The complainant reasons that these actions by the respondent secured unwarranted employment for Caputo in violation of N.J.S.A. 18A:12-24(b).

Allegation H: Sanger’s Silence and Inaction Has Secured Unwarranted Privileges, Advantages and Employment for Caputo

The complainant restates his allegation that the respondent “allowed Caputo to illegally assume the responsibilities of Assistant Superintendent without the appropriate certificate.” (Third Amendment to Complaint at pp. 61-62). The complainant also asserts that because the respondent was appointed to the position of Superintendent in July 2003, respondent was himself a “trainee” and should not have served as Caputo’s mentor. (*Id.* at pp. 62-65) The complainant asserts this to be a violation of N.J.S.A. 18A:12-24(b).

Allegation I: The Commission and the Respondent Have Failed to Carry Out the Provisions of the Act Relevant to the Filing of the Complaint and Amendment to Same.

The complainant asserts that although the Commission accepted his complaint and amendment as filed in June 23, 2010 and June 30, 2010, respectively, “the Commission has failed to serve the Respondent with said documents” which is a violation of N.J.S.A. 18A:12-29. (*Id.* at p. 69) The complainant additionally contends that the respondent requested an extension of time in which to submit an answer without submitting to the Commission proper proof of service of the request upon the complainant, as required by the Commission’s regulations at N.J.A.C. 6A:7.4(a). (*Id.* at pp. 69-70)

Allegation J: A Candidate in Training for His Administrative Certificate Cannot Mentor Another Candidate in Training for the Same

The complainant alleges that because the Board entered into a contract with the respondent commencing July 1, 2003 for the position of chief school administrator, “Sanger and Caputo were trainees in 2003.” The complainant thus reasons that both Sanger and Caputo should have been undergoing the one-year residency program required by N.J.A.C. 6:11-9.4(b) to obtain the standard certificate simultaneously. (Fourth Amendment to Complaint at p. 74) The complainant contends that “Sanger conspired to offer false information, knowing it to be false, with the purpose that be taken [sic] as a genuine record.” Again, the complainant asserts that the respondent’s aim was to secure unwarranted privileges, advantages and employment for Caputo in violation of N.J.S.A. 18A:12-24(b). (*Id.* at pp. 75-76).<sup>2</sup>

The complainant further claims that the facts set forth in the within complaint contradict the statement under oath offered by Gerald Caputo in answer to the complaint against him in 2008, Sabino Valdes v. Gerald Caputo, Union City Bd. of Education, C22-08 (November 24, 2009). The complainant reasons that because Respondent Sanger was copied on Caputo’s certification submitted in C22-08, “by artifice and device his [sic] has managed to conceal his wrongdoing.” (*Id.* at p. 77) The complainant charges that Caputo is guilty of perjury and Sanger conspired to keep the wrongdoing concealed. The complainant asserts this to be a violation of N.J.S.A. 18A:12-24(b).<sup>3</sup>

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<sup>2</sup> The complainant also asserts this to be a violation of N.J.S.A. 2C:28-7. (*Id.* at p. 76)

<sup>3</sup> The complainant also asserts this to be a violation of N.J.S.A. 2C:30-2. (*Id.* at p. 78)

Allegation K: The Commission and the Respondent Have Failed to Carry Out the Provisions of the Act Relevant to the Filing of His Complaint and Amendment to Same.

The complainant again alleges that the Commission failed to serve a copy of his complaint and amendment upon the respondent in violation of N.J.S.A. 18A:12-29 (id. at pp. 79-80) and renews his claim that the respondent violated the Commission's regulations by filing a request for an extension of time in which to answer with providing proper proof of service upon the complainant. (Id. at 80-81)

Allegation L: Sanger Obtained His Standard Certificate Prior to 2003

In the fifth amendment to his complaint, the complainant asserts that "contrary to [his] previous allegations, in 2003, Sanger was not a candidate for a standard certificate as school administrator being trained by a State-appointed mentor in a State-approved residency program." (Fifth Amendment to Complaint at p. 80)<sup>4</sup> Thus, the complainant concedes that based on the records he has obtained from the Department of Education, "if Sanger was truly trained and appointed by the Department as a mentor in 2004, then this agreement was legit." (Id.) Yet, the complainant maintains that the respondent violated N.J.S.A. 18A:12-24(b) because he allowed Caputo to perform his duties without appropriate certification. (Id. at 81)<sup>5</sup>

The complainant claims that when Caputo filed his certification with the Commission in the matter docketed as C22-08, he affirmed that he did not accept his salary without proper certification. According to the complainant, this was "a blatant lie" and respondent Sanger concealed it. (Id.) Moreover, the complainant contends that "Sanger's agreement to mentor Caputo in 2004 was a clear device to conceal the fact Caputo had been illegally employed since July 1, 2003" which, according to the complainant, is a violation of N.J.S.A. 18A:12-24(b).<sup>6</sup> (Id. at p. 81)

Allegation M: As of this Date, the Commission's Executive Director has failed to Carry Out the Duties Imposed by the Act and Her Office By Failing to Provide the Respondent with the Complaint and Amendment to Same.

The complainant again asserts that the Commission has failed to serve a copy of his complaint and amendment upon the respondent in violation of N.J.S.A. 18A:12-29 and restates his claim that the respondent violated the Commission's regulations by filing a request for an extension of time in which to answer with providing proper proof of service upon the complainant. (Id. at pp. 82-83)

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<sup>4</sup> The numbering of pages for the fourth and fifth amendments appear to overlap as the fourth amendment includes pages 73 through 82, yet the fifth amendment includes pages 79 through 85.

<sup>5</sup> The complainant also asserts this to be a violation of N.J.S.A. 2C:30-2. (Id. at p. 81)

<sup>6</sup> The complainant also asserts this to be a violation of N.J.S.A. 2C:30-2. (Id. at p. 82)

## ANALYSIS

In determining whether to grant a Motion to Dismiss, the Commission shall review the facts in the light most favorable to the complainant and determine whether the allegation(s), if true, could establish a violation of the Act. Unless the parties are otherwise notified, Motions to Dismiss and any responses thereto are reviewed by the Commission on a summary basis. N.J.A.C. 6A:28-8.3.<sup>7</sup> Thus, the question before the Commission was whether the complainant alleged facts which, if true, could support a finding that the respondents violated N.J.S.A. 18A:12-24(b), which states:

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;

### Threshold Issue of Timeliness

As a preliminary matter, the respondent contends that many of the allegations in the complaint are time-barred, in that the Commission's regulations provide a 180-day limitation period for filing a complaint. (Motion to Dismiss at p. 9, 12, 15, 17, 19, 20, 22, 24, 27) The complainant answers that he did not acquire "the evidence which ties Respondent to the allegations raised in [his] complaint" until March 16, 2010, the date that he received documents pursuant to an Open Public Records Act request. (Complaint's Reply to Motion at p. 14)

The Commission's regulations provide, in relevant part:

(a) Complaints shall be filed within 180 days of notice of the events which form the basis of the alleged violation(s). A complainant shall be deemed to be notified of events which form the basis of the alleged violation(s) when he or she knew of such events or when such events were made public so that one using reasonable diligence would know or should have known.

1. For complaints alleging a violation of N.J.S.A. 18A:12-24.1(a), the complaint shall be filed within 180 days of the issuance of a final decision from any court of law or administrative agency of this State demonstrating that the respondent(s) failed to

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<sup>7</sup>In this analysis, contrary to the respondent's assertion in his motion, the Commission notes that in its review of complaints alleging solely prohibited acts (*i.e.*, violations of N.J.S.A. 18A:12-24), complainants do not carry the burden to prove the allegations. The State Board of Education has instructed that it is not the function of the Ethics Commission to adjudicate the rights of complainants vis a vis school officials. Rather, "the function of a complainant is to bring acts by school officials which may indicate a violation of the School Ethics Act to the attention of the Ethics Commission so as to protect the public's confidence. See N.J.S.A. 18A:12-22. It is the Commission, not the complainant, which is charged in this context with acting as the guardian of the public interest." (I/M/O Frank Pannucci, Board of Education of Brick Township, Ocean County, State Board of Education, Dkt. No. 16-97, March 1, 2000, slip. op. at p. 9) By contrast, the School Ethics Act specifically states, "In making a determination regarding an alleged violation of the Code of Ethics for School Board Members, the burden of proof shall be on the accusing party to establish factually a violation of the code." (N.J.S.A. 18A:12-29(b))

enforce all laws, rules and regulations of the State Board of Education, and/or court orders pertaining to schools or that the respondent brought about changes through illegal or unethical procedures. (N.J.A.C. 6A:28-6.5(a))

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). In addressing potential violations of the School Ethics Act, the Commission must balance the public’s interest in knowing of potential violations against the important policy of repose and a respondent’s right to fairness. The time limitations set forth in the regulations must be enforced if it is to operate in a fair and consistent manner. Phillips v. Streckenbein et al., Edgewater Park Bd. of Educ., C19-03 (June 24, 2003).

For the purposes of this motion only, and granting all inferences to the complainant, the Commission assumes timeliness based on the complainant’s assertions. However, in so doing, the Commission cautions this complainant that its regulations state that “[a] complainant shall be deemed to be notified of events which form the basis of the alleged violation(s) when he or she knew of such events or when such events *were made public so that one using reasonable diligence would know or should have known.*” (N.J.A.C. 6A:28-6.5(a); emphasis added) A complaint may be deemed untimely where the events and facts forming the basis of the complaint were available to a complainant using reasonable diligence. “In general, ignorance of the existence of a cause of action will not prevent the running of a period of limitations except when there has been concealment.” Reilly v. Brice, 109 N.J. 555, 559 (1998).

#### Allegations I, K and M

Allegations I, K and M essentially assert that the Commission has failed to serve a copy of his complaint and amendment upon the respondent in violation of N.J.S.A. 18A:12-29 and that the respondent violated the Commission’s regulations by filing a request for an extension of time in which to respond to the complaint without providing proper proof of service upon the complainant. The respondent asserts that Allegations I and K are frivolous. (Motion to Dismiss at pp. 26, 30) As to Allegation M, the respondent affirms that he and Board Counsel were properly served with the complaint and all amendments by the Commission. (Motion to Dismiss at p. 31)

The Commission finds that the complainant’s allegations with respect to how the Commission and/or its staff processed a complaint may not be considered in the context of a complaint. Rather, a complainant may only allege violations of the Act by “school officials.” N.J.S.A. 18A:12-29(a). Similarly, for this reason, the Commission does not consider the complainant’s allegations that the respondent did not properly serve a copy of his request for an extension of time to submit an answer or responsive pleading in accordance with its regulations. The Commission therefore finds that Allegations I, K and M are properly dismissed in that they fail to set forth any facts as to this respondent which, if true, would support a violation of the Act by a school official.

## Allegation D

In Allegation D, the complainant cites to regulations governing licensing, but makes no specific allegations against the respondent and does not cite to a violation of the School Ethics Act. (Amendment to Complaint at pp. 40-43) The respondent notes this deficiency and further asserts that “whatever the allegations are in this section of the Amendment,” they are untimely, as they date to 1999. (Motion to Dismiss at pp. 16-17) The Commission finds that, assuming for the purposes of this motion that Allegation D is timely, it is nevertheless properly dismissed inasmuch as the complainant fails to allege a violation of the School Ethics Act.

## Allegations C, F, G, H

In Allegation C, the complainant asserts that the respondent violated the Act by allowing Caputo to assume his job responsibilities as Assistant Superintendent in July 2003 without proper certification and by serving as mentor for Caputo in 2004. In Allegation F, the complainant repeats the facts relating to the issuance of Caputo’s certificate of eligibility and provisional certificate, as set forth in Allegation C, and asserts that because Sanger was the Superintendent in 2003, he was responsible for making sure that newly-hired teaching staff members had an appropriate certificate, thus allowing Caputo to benefit from an unauthorized salary (*id.* at p. 46) and he was involved in the making of the contract dated April 2004. (*Id.* at p. 48) In Allegation G, the complainant alleges that, in 2003, the respondent did not make the County Superintendent aware that “Caputo had not been provided with the proper certificate” to assume the position of Assistant Superintendent (*id.* at p. 56) and hid the fact that there was no official (*Id.* at p. 57) In Allegation H, the complainant restates his claim that the respondent “allowed Caputo to illegally assume the responsibilities of Assistant Superintendent without the appropriate certificate” (*Id.* 61-61).<sup>8</sup> The complainant asserts these were violations of N.J.S.A. 18A:12-24(b).

In addition to asserting that these allegations are untimely, the respondent contends that the complainant is collaterally estopped from relitigating these issues, based on the Commission’s prior decision in Sabino Valdes v. Gerald Caputo, Union City Bd. of Education, C22-08 (November 24, 2009). Although the Commission recognizes that these issues were raised in the prior matter docketed as C22-08, it is not persuaded that the doctrine of collateral estoppel precludes the complainant from raising them in a subsequent complaint where the Commission’s prior decision did not fully address the merits of the complainant’s claims. In re Dawson, 136 N.J. 1, 20-21 (1994)

Nevertheless, it is critical to note that the prior complaint was dismissed and the Commission specifically found that:

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<sup>8</sup> The complainant also asserts that because the respondent was appointed to the position of Superintendent in July 2003, respondent was himself a “trainee” and should not served as Caputo’s mentor. (*Id.* at pp. 62-65) This claim is addressed in Allegation J below.



to the extent the complainant maintains that the respondent's initial appointment in July 2003 was improper, such allegation implicates statutes which are not within the jurisdiction of the School Ethics Commission. Moreover, such an allegation would be raised against the Board of Education pursuant to N.J.S.A. 18A:6-9, since the Board, as the respondent's employer, is responsible for ensuring that all employees are appointed in accordance with the law. Similarly, to the extent that the complainant maintains that the certifications issued to the respondent were not in accordance with State law or regulation, any such cause of action is not with this Commission. Valdes, supra at p. 5

Here, the Commission is unable to determine whether Caputo's appointment to the position of Assistant Superintendent in 2003 was "unwarranted,"<sup>9</sup> as required by the statute, since such a determination necessarily requires preliminary findings on issues, such as employment and certification mandates, which do not arise under the School Ethics Act. The Commission may not receive, hear or consider any pleadings, motion papers or documents of any kind relating to any matter that does not arise under the Act. N.J.A.C. 6A:28-1.4(a). Accordingly, even assuming for the purposes of this motion that Allegations C, F, G, H are timely, these allegations primarily implicate regulations and statutes that are not within the jurisdiction of the Commission and they are properly dismissed.

#### Allegations A, B and E

In Allegation A, the complainant asserts that Gerald Caputo was appointed by the Union City Board of Education as a Vice Principal without an application or the required certification. (Complaint at p. 6) In Allegation B, the complainant asserts that after serving as a Vice Principal from September 1, 1999 to June 30, 2000, Mr. Caputo was improperly promoted to be the Executive Director of Facilities & School Safety. (Id. at p. 8) The complainant asserts that these appointments were in violation of N.J.S.A. 18A:12-24(b). In Allegation E, the complainant contends that in 2000, the Board appointed Caputo to an unrecognized title (Executive Director) without obtaining approval from the County Superintendent. Although the complainant alleges that this was a violation of State law and administrative code, he does not make any allegations as to this respondent and does not cite to any violations of the Act. (Id. at pp. 43-44)

In his Motion to Dismiss, the respondent contends that these allegations are untimely and the complainant fails to set forth any specific allegations against him. (Motion to Dismiss at pp. 8-12; p. 18-19) As to Allegations A and B, the respondent also notes that these allegations are not within the jurisdiction of the Commission. (Id. at pp. 10-12).

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<sup>9</sup> See, I/M/O Doris Graves, Pleasantville Board of Education, Atlantic County, C47-05 (May 27, 2008), Commissioner of Education Decision No. 301-08SEC, decided July 10, 2008, rejecting a claim of violation of N.J.S.A. 18A:12-24(b) because the record did not demonstrate that the respondent Board member's relative did not deserve the continued appointment to the position of head custodian; Freeman v. Jackson, Camden City Bd. of Ed., C18-02 (October 29, 2002) where the Commission declined to find probable cause that the respondent violated N.J.S.A. 18A:12-24(b) without information to show that when she voted on the reinstatement of her friend/occasional live-in companion to employment in the district, such reinstatement was unwarranted.

Notably, in his response to the Motion to Dismiss, the complainant concedes that “prior to 2003, there are no assertions of violations of the Act against [the] Respondent in my complaint and amendments. Second, my complaint and amendments do not assert a violation of N.J.S.A. 18A:12-24(b) against [the] Respondent until 2003.” (Complainant’s Response to Motion to at p. 4) Therefore, based on the complainant’s acknowledgement that Allegations A, B and E do not assert any specific violations against this respondent inasmuch as the events pre-date 2003, the Commission finds that, even assuming for the purposes of this motion that they are timely, Allegations A, B and E are properly dismissed.<sup>10</sup>

### Allegations J and L

In Allegation J, the complainant asserts that because the respondent and Caputo were “trainees” in 2003, Sanger improperly administered Caputo’s residency program and his aim was to secure unwarranted privileges, advantages and employment for Caputo in violation of N.J.S.A. 18A:12-24(b). (Id. at pp. 75-76) Yet, in Allegation L, the complainant admits that “contrary to his previous allegations, in 2003, Sanger was not a candidate for a standard certificate as a school administrator being trained by a State-approved mentor in a State-approved residency program.” (Id. at p. 80) Thus, the complainant concedes in the fifth amendment to his complaint that, based on the records he has obtained from the Department of Education, “if Sanger was truly trained and appointed by the Department as a mentor in 2004, then this agreement was legit.” (Id.)<sup>11</sup>

Additionally, in Allegation J, the complainant alleges that the facts set forth in the within complaint contradict the statement under oath offered by Gerald Caputo in his answer to the complainant’s complaint against him in 2008, Sabino Valdes v. Gerald Caputo, Union City Bd. of Education, C22-08 (November 24, 2009). The complainant reasons that because Respondent Sanger was copied on Caputo’s certification submitted in C22-08, “by artifice and device his [sic] has managed to conceal his wrongdoing.” (Id. at p. 77) The complainant, therefore, contends that Caputo is guilty of perjury and Sanger conspired to keep the wrongdoing concealed. The complainant asserts this to be a violation of N.J.S.A. 18A:12-24(b). The complainant essentially repeats this claim in Allegation L.

In his Motion to Dismiss, the respondent contends that that Allegation J is untimely and that the complainant is collaterally stopped from relitigating the issues in Allegations J and L based on the Commission’s prior decision, Sabino Valdes v. Gerald Caputo, Union City Bd. of Education, C22-08 (November 24, 2009). (Motion to Dismiss at p. 27, 30, 31) Finally, the respondent contends that Allegations J and L are not within the jurisdiction of the Commission. (Id. at p. 29 and 31)

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<sup>10</sup> The Commission also notes in this connection that it does not have the authority to review decisions (such as hiring) rendered by local boards of education, as opposed to allegations that individually-named school officials violated the School Ethics Act. See, Dericks et al. v. Johnson et al., Sparta Board of Education, Sussex County, C01-08, (October 27, 2009).

<sup>11</sup> To the extent the complainant alleges in Allegation L that the respondent nevertheless violated N.J.S.A. 18A:12-24(b) because he allowed Caputo to perform his duties without appropriate certification, (Id. at 81), these allegations are addressed in Allegations C, F, G and H, above.

The Commission finds that, even assuming for the purposes of this motion that Allegations J and L are timely and not precluded by the doctrine of collateral estoppel, and further assuming that any issues remain beyond the complainant's acknowledgement in Allegation L that Sanger was not himself a candidate in 2003 for a standard certificate as a school administrator, as originally alleged, so as to cast doubt on the legitimacy of the State-approved mentor agreement, the Commission is nevertheless unable to determine whether the respondent attempted to secure unwarranted privileges for Caputo since such a determination necessarily requires preliminary findings on issues which do not arise under the School Ethics Act. The Commission may not receive, hear or consider any pleadings, motion papers or documents of any kind relating to any matter that does not arise under the Act. N.J.A.C. 6A:28-1.4(a). With respect to the complainant's claims of perjury in Allegation J, the Commission notes that it does not reach to any such allegation against Caputo, who is not a party to this matter. As this claim relates to the respondent, the Commission finds that the complainant failed to set forth any facts which, if true, would support a violation of N.J.S.A. 18A:12-24(b). Finally, the Commission does not reach to the complainant's claims that the respondent has violated criminal statutes.<sup>12</sup>

## **REQUEST FOR SANCTIONS**

At its meeting on September 28, 2010, the Commission considered the respondent's request that the Commission find that the complaint was frivolous and impose sanctions pursuant to N.J.S.A. 18A:12-29(e). The Commission does not find that the complainant "[c]ommenced, used or continued [this matter] in bad faith, solely for the purpose of harassment, delay or malicious injury;" or that the complainant "knew, or should have known," that the matter "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.A.C. 6A:28-1.2.

However, the Commission notes that the complainant has now been informed on two occasions that his claims relative to Gerald Caputo's appointment in July 2003, as well as his claims relative to Caputo's qualifications for the appointment, are not within its jurisdictional purview and stresses that, in the future, he be guided accordingly. (See, Ted Doty v. Frank Giarratano et al., Rockaway Township Bd. of Ed., Morris County, C25-03 (September 23, 2003)).

## **DECISION**

Based on the foregoing, the Commission grants the respondent's Motion to Dismiss the complaint. This is a final decision of an administrative agency, appealable to the Superior Court, Appellate Division. See, New Jersey Court Rule 2:2-3(a).

Robert W. Bender  
Chairperson

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<sup>12</sup> Similarly, the Commission finds no basis in this record to make a report to the Attorney General, pursuant to N.J.S.A. 18A:12-28(c), as asserted in footnote 67 on page 37 of the complaint.

Mailing Date: October 27, 2010

**Resolution Adopting Decision – C24-10**

**Whereas**, the School Ethics Commission has considered the complaint and the Motion to Dismiss filed on behalf of the respondent and the reply thereto; and

**Whereas**, at its meeting on September 28, 2010, the Commission determined to grant the respondent's Motion to Dismiss the complaint; and

**Whereas**, the Commission also found that the complaint was not frivolous, in accordance with the standard set forth at N.J.A.C. 6A:28-1.2; and

**Whereas**, the Commission has reviewed and approved the decision memorializing said action;

**Now Therefore Be It Resolved**, that the Commission hereby adopts the decision and directs its staff to notify all parties to this action of its decision herein.

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Robert W. Bender, Chairperson

I hereby certify that the Resolution was duly adopted by the School Ethics Commission at its public meeting on October 26, 2010.

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Joanne Boyle  
Executive Director