

REQUEST FOR JUDICIAL INTERVENTION

SUPREME COURT, WESTCHESTER COUNTY	INDEX NO.	DATE PURCHASED:	For Clerk Only
PETITIONER: CAMILLO M. SANTOMERO			IAS Entry Date
RESPONDENTS: BOARD OF EDUCATION OF THE BEDFORD CENTRAL SCHOOL DISTRICT, SUSAN ELION WOLLIN, as President of the BOARD OF EDUCATION OF THE BEDFORD CENTRAL SCHOOL DISTRICT, CAROLE LACOLLA, as District Clerk of the BOARD OF EDUCATION OF THE BEDFORD CENTRAL SCHOOL DISTRICT and DR. DEBRA JACKSON			Judge Assigned
			RJI Date

Date Issue Joined: N/A Bill of particulars served (Y/N): N

NATURE OF JUDICIAL INTERVENTION (check ONE box only and enter information)

- | | |
|---|--|
| <input type="checkbox"/> Request for preliminary conference | <input checked="" type="checkbox"/> Notice of petition |
| <input type="checkbox"/> Note of issue and/or certificate of readiness | Return Date: December 19, 2008 |
| <input type="checkbox"/> Notice of motion
Relief sought:
Return Date: | <input type="checkbox"/> Notice of medical or dental malpractice action
(specify _____) |
| <input type="checkbox"/> Order to show cause
(clerk enter return date _____)
Relief sought: | <input type="checkbox"/> Statement of net worth |
| <input type="checkbox"/> Other ex parte application
_____ | <input type="checkbox"/> Writ of habeas corpus |
| | <input type="checkbox"/> Other
(specify: _____) |

NATURE OF ACTION OR PROCEEDING (check ONE box only)

MATRIMONIAL

- Contested - CM
 Uncontested - UM

COMMERCIAL

- Contract - CONT
 Corporate - CORP
 Insurance (where insurer is a party, except arbitration) - INS
 UCC (Including sales, negotiable instruments) - UCC
 * Other Commercial - OC

REAL PROPERTY

- Tax Certiorari - TAX
 Foreclosure - FOR
 Condemnation - COND
 Landlord/Tenant - LT
 * Other Real Property - ORP

OTHER MATTERS

- * child support - OTH

TORTS

- Malpractice
 Medical/Podiatric - MM
 Dental - DM
 *Other Professional - OPM

 Motor Vehicle - MV
 *Products Liability - PL

 Environmental - EN
 Asbestos - ASB
 Breast Implant - BI
 *Other Negligence - OTN

 *Other Tort (Including Intentional) - (OT)

SPECIAL PROCEEDINGS

- Article 75 (Arbitration) - ARB
 Article 77 (Trusts) - ART 77
 Article 78 - ART 78
 Election Law - ELEC
 Guardianship - (MHL Art 81) - GUARD 81
 *Other Mental Hygiene - MHYG
 *Other Special Proceeding - OSP

Is this action/proceeding against a

YES NO

YES NO

[] [X] Municipality (specify _____)

[] [X] Public Authority (specify _____)

[] [X] Does this action/proceeding seek equitable relief?

[] [X] Does this action/proceeding seek recovery for personal injury?

[] [X] Does this action/proceeding seek recovery for property damage?

Pre-Note Time Frames:

(This applies to all cases except contested matrimonials and tax certiorari cases)

Estimated Time required for case to be ready for trial (from filing of RJI to filing of Note of Issue)

Expedited: 0-8 months Standard: 9-12 months Complex: 13-15 months

Contested Matrimonial Cases Only: (Check and give date)

Has a summons been served? No Yes, date

Was a Notice of No Necessity Filed? No Yes, date

ATTORNEY(S) FOR PLAINTIFF(S):

<u>Self Rep.*</u>	<u>Name</u>	<u>Address</u>	<u>Phone #</u>
<input type="checkbox"/>	LAW OFFICE OF ROBERT A. STERNBACH	274 Madison Avenue, Suite 1303 New York, New York 10016	(212) 661-4040
<input type="checkbox"/>			

ATTORNEY(S) FOR DEFENDANT(S):

<u>Self Rep.*</u>	<u>Name</u>	<u>Address</u>	<u>Phone #</u>
<input type="checkbox"/>			
<input type="checkbox"/>			

INSURANCE CARRIERS: Not known.

RELATED CASES:

<u>Title</u>	<u>Index #</u>	<u>Court</u>	<u>Nature of Relationship</u>
None.			

I AFFIRM UNDER PENALTY OF PERJURY THAT, TO MY KNOWLEDGE, OTHER THAN AS NOTED ABOVE, THERE ARE AND HAVE BEEN NO RELATED ACTIONS OR PROCEEDINGS, NOR HAS A REQUEST FOR JUDICIAL INTERVENTION PREVIOUSLY BEEN FILED IN THIS ACTION OR PROCEEDING.

Dated: November 12, 2008


(SIGNATURE)

ROBERT A. STERNBACH, ESQ
ATTORNEY FOR PETITIONER

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

In the Matter of an
Article 78 Proceeding

CAMILLO M. SANTOMERO,

Petitioner,

-against-

BOARD OF EDUCATION OF THE BEDFORD
CENTRAL SCHOOL DISTRICT,
SUSAN ELION WOLLIN, as President of the
BOARD OF EDUCATION OF THE BEDFORD
CENTRAL SCHOOL DISTRICT,
CAROLE LACOLLA as District Clerk of the
BOARD OF EDUCATION OF THE BEDFORD
CENTRAL SCHOOL DISTRICT
and DR. DEBRA JACKSON,

Respondents.

PETITION

Index. No. 25404-2008

Petitioner CAMILLO M. SANTOMERO, by his attorneys, Law Office Of Robert A. Sternbach, as and for his Petition, pursuant to CPLR Article 78, respectfully alleges, upon information and belief, except as to matters concerning himself, which are alleged upon knowledge, as follows:

PRELIMINARY STATEMENT

1. This is a proceeding under CPLR Article 78 and Public Officers Law Article 6 (the New York State Freedom of Information Law). I seek a judgment ordering Respondents to provide copies of "any and all records relating to the 'certain dispute' between the Bedford Central Board of Education and Superintendent of Schools Dr. Debra Jackson that resulted in her termination agreement."

PARTIES

2. I am a resident of the State of New York. I am a former member of the Board of Education of the Bedford Central School District and am active in local administration and politics.

3. Respondent Board of Education of the Bedford Central School District (the "Board") is the administrative body charged with operation of the Bedford Central School District (the "District"), which is located in the town of Bedford, County of Westchester, State of New York.

4. I am informed that the Board is an "agency" performing a governmental function within the meaning of Article 6 of the Public Officers Law, commonly known as the "Freedom of Information Law" ("FOIL") and, as such, is subject to the provisions of that law.

5. Respondent Carole Lacolla ("LaColla") is the District Clerk of the Board and is the person who, on behalf of the Board, denied access to the records I requested.

6. Respondent Susan Elion Wollin ("Wollin") is the President of the Board and the person who affirmed the Board's denial of access to the records I requested.

7. Respondent Dr. Debra Jackson ("Dr. Jackson") is the former Superintendent of the District who, along with the Board, is a party to the Agreement central to this dispute.

FACTUAL BACKGROUND

8. In September 2007, the high-performing and affluent Bedford Central School District was rocked by scandal when the principal of Bedford Hills Elementary School was brought up on criminal charges for failing to report allegations of the rape of a 9-year-old girl to child protection officials. According to the complaint filed against the principal in Court, the principal was informed of the allegations of abuse in December 2006 or January 2007, yet failed

to notify state officials or the school superintendent who, at the time, was Dr. Jackson. (*See* Exhibit A, New York Times article dated 9/11/06).

9. Dr. Jackson had been hired as Superintendent of the District pursuant to a written agreement between herself and the Board dated July 10, 2006 (the “Employment Agreement”). Under the Employment Agreement, Jackson was to serve as the chief administrative officer of the Bedford Central School District for the period July 1, 2006 through June 30, 2011.

10. According to the Board and Dr. Jackson, on or about June 2007, a “dispute” arose between Dr. Jackson and the Board “with regard to the Superintendent’s performance of her duties.”

11. On or about June 2007, the Board and Dr. Jackson entered into a twenty page Settlement Agreement and Mutual Release” (the “Settlement Agreement”). (*See* Exhibit B).

12. Pursuant to the Settlement Agreement, among other things, (a) Dr. Jackson tendered her resignation effective June 30, 2008 (*Id.* ¶ 2); (b) the parties agreed that, until the effective date of Dr. Jackson’s resignation, the terms of the Employment Agreement would remain in full force and effect (*Id.* ¶ 3); (c) the Board agreed to pay Dr. Jackson the sum of \$650,000.00 no later than June 30, 2007, and further agreed to provide health care coverage (medical and dental) for her and her family for the remainder of her life at no cost (*Id.* ¶ 4); (d) the Board agreed to give Dr. Jackson “good references” and to indemnify her if the Settlement Agreement was challenged by any party (*Id.* ¶¶ 10, 15); and (e) the parties agreed not to bring suit or retaliate against each other and to keep the terms of, and negotiations concerning, the Settlement Agreement confidential (*Id.* ¶¶ 5-7, 9, 14).

13. The only explanation proffered in the Settlement Agreement for the separation brokered therein was that “a certain dispute has arisen between the Superintendent and the Board

with regard to the Superintendent's performance of her duties." (*Id.* at p. 2). The official Press Release regarding the matter states merely that "terminating the last three years of [Jackson's] five year contract ... was in the mutual interest of both parties." (*See* Press Release attached to Exhibit B, Settlement Agreement).

PROCEDURAL BACKGROUND

14. On June 12, 2008, I submitted a request to LaColla, as representative of the Board, for access to certain records pursuant to Public Officers Law Article 6 (*see* Exhibit C).

15. In my request, I sought the following records:

any and all records relating to the "certain dispute" between the Bedford Central Board of Education and Superintendent of Schools Dr. Debra Jackson that resulted in her termination agreement.

16. On July 10, 2008, the Board denied my request on the ground that "the release of these records constitutes an unwarranted invasion of privacy and your request implicates a confidential matter" (*see* Exhibit D). The Board proffered no support for this conclusion.

17. On July 18, 2008, pursuant to Public Officers Law § 89, I filed an appeal from the Board's July 10, 2008 denial. (*See* Exhibit E).

18. On August 7, 2008, the Board, in a letter signed by Wollin, denied my appeal, stating:

Disclosure of the records requested would constitute an unwarranted invasion of privacy. As outlined in the Freedom of Information Law, disclosure of allegations or unsubstantiated charges would result in an unwarranted invasion of privacy [citing, in footnote, POL §§87(2)(b), 89(2)(b)(i)]. Furthermore, the Board of Education is denying access, concluding that such records are intra-agency material involving non-final policy or determinations. (Herald Company. v. School Dist. of City of Syracuse, 104 Misc.2d 1041, 1046).

(See Exhibit F).

19. I have exhausted my administrative remedies. I am advised that review by this Court is ripe and otherwise appropriate pursuant to, and in accordance with, CPLR Article 78 and Public Officers Law Article 6.

GROUND FOR RELIEF

20. I am advised that I am legally entitled to the records I requested, in that they are agency records.

21. I am further advised that the Freedom of Information Law (Article 6 of the Public Officers Law) makes the records of public agencies presumptively accessible, unless the records fall within one of the specific exemptions set forth in the statute; that the records I seek do not fall within any of these exemptions; and that therefore the records should be given to me in response to my Freedom of Information Law request.

22. I am further advised that the reasons stated by Respondents for denying my request (*see* Exhibit F) are without legal merit and are contrary to the law of this State; and that Respondents' determination to deny the records I requested violates their duty to disclose records under the Freedom of Information Law, is arbitrary and capricious, and constitutes an abuse of discretion.

23. The official records I request are a matter of compelling public interest. They concern the origins of the Board's extraordinary agreement to make an immediate payment to an employee of \$650,000.00, plus indeterminate future expenditures for medical and dental care for the employee and her family for the rest of her life --- a total obligation that may well amount to approximately one million dollars of taxpayer money. The sole reason given for the Board's apparently supine concession is that, without it, "protracted and expensive litigation might

result” which, for undisclosed reasons known solely to the parties, “... would not be in the interest of the School District, its students, staff and taxpayers.”

24. However, contrary to the summary conclusion reached by the Board in denying my request for records and my appeal, the School District, students, staff and taxpayers are entitled to information from which they might learn the basis for the Settlement Agreement’s extraordinary terms and decide for themselves whether they were justified --- or whether other considerations, having nothing to do with an unwarranted invasion of Dr. Jackson’s or anyone else’s privacy, were the motivating force.

25. Consequently, I am advised that all records I request must be provided. The final determination of Respondents has denied my right of access to agency records, a right that is guaranteed by Public Officers Law Article 6. The Board must not be permitted to avoid disclosure of the basis for the extraordinary settlement it reached with Dr. Jackson.

26. I am advised that, if I prevail in this proceeding, the Court should, pursuant to Public Officers Law § 89(4)(c), award the reasonable attorney’s fees and other litigation costs I incurred in connection with this proceeding.

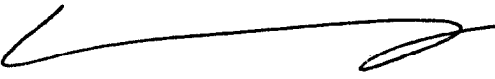
27. The accompanying Memorandum of Law contains legal argument and citations in support of my Petition.

28. No previous request has been made for the relief herein requested.

WHEREFORE, Petitioner respectfully requests that a judgment be entered pursuant to CPLR Article 78:

- (a) annulling the final determination of respondents dated August 7, 2008, which denied Petitioner's request for access to records he requested on June 12, 2008, pursuant to Public Officers Law Article 6;
- (b) directing Respondents to provide Petitioner with all such records;
- (c) ordering Respondents to pay the reasonable attorney's fees and other costs incurred by Petitioner in connection with this proceeding; and
- (d) granting Petitioner such other and further relief as the Court deems just and proper.

Dated: November 10, 2008

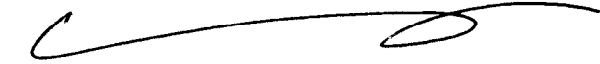


CAMILLO M. SANTOMERO
Petitioner

VERIFICATION

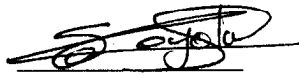
STATE OF NEW YORK)
) ss:
COUNTY OF WESTCHESTER)

I, Camillo M. Santomero, am the Petitioner in this proceeding. I have read the foregoing Petition and know the contents thereof. The contents are true to my own knowledge except as to matters therein stated to be alleged upon information and belief, and as to those matters I believe them to be true.



Camillo M. Santomero

Subscribed and sworn to before me
this 1st day of November, 2008



Notary Public

SAHID A. LOYOLA
Notary Public - State of New York
No. 01LO6165629
Qualified in Westchester County
My Commission Expires May 14, 2011

September 11, 2006

Abuse Case Shakes Parents' Trust in a Principal

By WINNIE HU

BEDFORD HILLS, N.Y., Sept. 7 — The students, teachers and parents of Bedford Hills Elementary School in northern Westchester County adopted a student bill of rights and responsibilities last year that, among other things, calls on them to keep everyone safe.

So it was with disbelief and outrage that many families returned to school on Wednesday to learn that the principal, Victoria Graboski, 46, is facing a criminal charge of failing to report allegations of the rape of a 9-year-old girl to state child protection officials.

If convicted of the misdemeanor charge, Ms. Graboski, who was arrested on Sept. 1, could face up to a year in jail.

Melanie Danisi, 35, whose daughter is in second grade, said: "For me as a parent, it's one of my worst nightmares, and then when I found out about the school possibly knowing about it, I was even sadder because it might have been prevented. I think it's a black eye on the community. One of my friends said to me, 'You pay all those taxes and look at what's going on.'"

Law enforcement officials have revealed few details about the case, except to say that their investigation showed that Ms. Graboski had been told of the allegations of sexual abuse, which school officials said had not occurred on school grounds.

Parents, neighbors and others in the community said that Ms. Graboski learned about the allegations in December or January after the girl confided in someone at school. According to the complaint the police filed with the court, the principal heard from a parent that one student had told another about having sex with an adult. Law enforcement officials said Ms. Graboski did not notify state officials or even the school superintendent.

About a month ago, local officials said the girl's mother called the police, upset about pictures of her 9-year-old daughter that she had found on the cellphone of her boyfriend, Cesar Joel Sagastume-Morales, 27, a day laborer who lived across the road from the school and has since fled a police search.

Ms. Graboski, who is scheduled to appear in court on Thursday, did not respond to several telephone messages left at her home seeking comment for this article, and efforts to reach her lawyer were unsuccessful. The girl's mother did not answer the door at her home on Thursday, or respond to a request for an interview.

School district officials are also looking into the matter, and placed Ms. Graboski and five teachers on paid leave just a week before classes started. The jarring events have left many parents at a loss as to how to explain the

sudden absences to their children in this rural, affluent hamlet. Many families have lived here for generations, while others have come because of the stellar schools and comfortable life.

It is a place where teachers are regarded as friends as much as role models, and the biggest school crisis until now was an outbreak of head lice.

"I'm very upset about it, and I'm very disappointed in the school," said Ida Barresi, 36, a speech and language pathologist who moved to Bedford Hills from the Bronx in 1998 so that her son and three daughters could attend the local schools. "A lot of us are full-time workers, and since our children are here most of the time, we depend on the school to identify what we may miss as tired parents."

The upheaval at the school has inevitably spilled into the leafy streets, as mothers pushing strollers pass the "Wanted" poster of Mr. Sagastume-Morales in the window of Briccetti's Bedford Market. A few doors away, the local florist, Ghaias Habal, 46, said he remained shocked by the arrest of Ms. Graboski, one of his regular customers, whom he called a "very nice person with a smile on her face all the time."

Bedford Hills Elementary, with 356 students in prekindergarten through fifth grade, is the smallest of seven schools in the high-performing Bedford Central School District. While the area's gated estates and horse farms have attracted some of Westchester's wealthiest families, the school is racially and economically mixed. Nearly one-fifth of the students qualify for free or reduced-price lunches, and more than a quarter of the students are Hispanic, including many from immigrant families that speak little or no English at home.

Ms. Graboski has worked in the Bedford district since 1987, as a special education teacher and a trainer for other teachers, and was appointed the school's principal in 2004. Under her leadership, the school's fourth-grade math and English test scores rose significantly, according to district records.

Dr. Debra Jackson, the Bedford district superintendent, said that Ms. Graboski had also decided to emphasize character-building, working with parents, teachers and students to develop a program that has become a model for other schools. As part of that effort, the school adopted the bill of rights and responsibilities, which encourages students to learn; to be honest; to treat others politely, kindly and fairly; and to keep everyone safe. Students who violate any of those tenets must fill out a worksheet explaining what happened, and how they would act the next time they are in a similar situation.

"She is a well-regarded principal," Dr. Jackson said of Ms. Graboski. "She has a strong relationship with her students and staff."

Several parents said Ms. Graboski had been a creative and attentive principal who responded promptly to their complaints, but others said they were dissatisfied with the way she had handled school problems.

Curt Fenton, 44, an insurance underwriter whose daughter is in the third grade, said he met with Ms. Graboski last year after hearing from other parents that a student had threatened to take a gun to school. He said he had told her that she should have alerted parents to the threat.

Mr. Fenton said that the administration talked a lot about caring about the children, but that "their actions lead me to believe that they want to protect the reputation of the school and the tenured teachers more than they want to protect our kids."

Ms. Graboski's salary is \$133,277; the average salary for teachers in the Bedford district is \$84,500, according to district records. School officials have not publicly identified the five teachers placed on leave, and declined to discuss their exact involvement in the case. This has frustrated and upset many parents who have been trying to piece together what happened since receiving an oblique letter dated Aug. 30 that referred to "information of a serious nature" and announced an interim principal.

During a meeting on Thursday night, Bedford district officials and mental health counselors sought to reassure more than 300 parents and students that their school was still a safe haven. But the strained civility turned into sniping at times, and a palpable undercurrent of anger and sadness ran through the crowd. Several mothers brushed away tears.

Afterward, Janet Davis, a fourth-grade teacher at the school, spoke up for Ms. Graboski and the teachers placed on leave, who did not attend the meeting. "The staff involved would never do anything to harm the children," Ms. Davis said. "They love the children here, and they were the most dedicated and ethical staff members."

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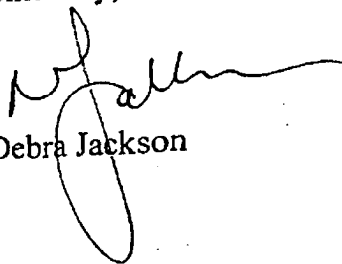
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Debra Jackson

To the Board of Education:

I, Debra Jackson, hereby tender my resignation, effective June 30, 2008. This resignation is being made pursuant to an Agreement between me and the Board of Education of the Bedford Central School District dated June 8, 2007, and is expressly conditioned upon the enforceability, validity and performance of said Agreement.

Sincerely,



Debra Jackson

2 ✓

PRESS RELEASE

For Immediate Release

The Superintendent of the Bedford Central School District will resign effective June 30, 2008, thus terminating the last three years of a five year contract. She began her tenure as Bedford's Superintendent of Schools on July 1, 2004.

While Dr. Jackson was fully-prepared to serve out her entire contract, she and the Board of Education have agreed that the separation is in the mutual interest of both parties.

The Superintendent of Schools and Board of Education shared that they will work together to ensure a smooth transition during the upcoming school year. The Superintendent stated, "The district's long range goals will continue to be addressed during the transition year. I look forward to continuing to work with the schools and the community."

JG 6/8/07

UNIVERSITY OF THE STATE OF NEW YORK
BEDFORD CENTRAL SCHOOL DISTRICT

In the Matter of the Dispute between

THE BOARD OF EDUCATION OF THE BEDFORD
CENTRAL SCHOOL DISTRICT

-and-

DEBRA JACKSON SUPERINTENDENT OF SCHOOLS.

SETTLEMENT AGREEMENT AND MUTUAL RELEASES

This is an Agreement by and between DEBRA JACKSON (hereinafter referred to as "JACKSON" or the "SUPERINTENDENT"), and the BOARD OF EDUCATION of the BEDFORD CENTRAL SCHOOL DISTRICT and its members, individually and in their official capacity (hereinafter occasionally referred to as "DISTRICT" or "BOARD").

WHEREAS, pursuant to an agreement dated July 10, 2006 between the SUPERINTENDENT and the BOARD (the "Employment Agreement"), the SUPERINTENDENT was employed as chief administrative officer of the DISTRICT for the period July 1, 2006 through June 30, 2011; and,

WHEREAS, a certain dispute has arisen between the SUPERINTENDENT and the BOARD with regard to the SUPERINTENDENT'S performance of her duties; and,

WHEREAS, the BOARD desires to terminate the services of the SUPERINTENDENT; and,

WHEREAS, the SUPERINTENDENT maintains that she is a party to a valid and subsisting contract of employment and that there is no cause which would justify the termination of the SUPERINTENDENT'S services, and that the SUPERINTENDENT would, in the absence of this Settlement Agreement ("Agreement"), pursue claims for direct and consequential damages for breach of contract; and,

WHEREAS, there is a dispute between the parties which, in the absence of this Agreement, would have to be determined in protracted and expensive litigation which would not be in the interest of either party or in the interest of the School District, its students, staff and taxpayers; and,

WHEREAS, the SUPERINTENDENT and the DISTRICT, in order amicably to resolve any and all matters in controversy, disputes, causes of action, claims, contentions and differences between them, have reached a full

and final compromise as set forth herein respecting the continued employment of the SUPERINTENDENT, and respecting any and all matters in controversy, disputes, causes of action, claims, contentions and differences between the SUPERINTENDENT and the BOARD, and/or any of the BOARD'S officers, agents, employees or BOARD members; and,

WHEREAS, the parties have been and are represented by counsel, have had all the terms and conditions of this Agreement and the general releases herein clearly explained to them by their respective counsel, and now freely consent to enter into this Agreement and the general releases, such consent not having been induced by fraud, duress, or any other undue influence; and,

WHEREAS, the SUPERINTENDENT (i) has been represented by and has consulted with legal counsel of her choice; (ii) has been given a reasonable period within which to consider this Agreement and general release; and, (iii) understands that in executing this Agreement she is, inter alia, giving up any and all rights and claims which she has, or may have had in law or in equity under all federal, state, county or local statutes, laws, rules and regulations pertaining to employment, as well as any and all claims under contract or tort law, or which were or could have been alleged by her;

NOW, THEREFORE, in consideration of the said mutual undertakings and promises contained in this Agreement and other good and valuable considerations, the parties agree and covenant as follows:

1. The above recitations of facts and circumstances set forth in all of the preceding "Whereas" clauses are expressly incorporated herein and form a part of the terms of this Agreement.
2. By executing this Agreement, the BOARD shall not seek the termination of the services of the SUPERINTENDENT, and the SUPERINTENDENT for and in consideration of the promises to be rendered by the BOARD as set forth herein, irrevocably resigns her employment effective at the close of business on June 30, 2008. The SUPERINTENDENT shall not seek any payment, remedy, damages or other claim against the BOARD, the BEDFORD CENTRAL SCHOOL DISTRICT, or any of their respective members, officers, employees, servants or agents, other than the performances to be rendered as specifically set forth herein.
3. Through June 30, 2008, the SUPERINTENDENT shall continue to serve as Superintendent of Schools pursuant to the terms and conditions of the Employment Agreement and receive the salary and benefits set forth therein.

Nothing herein contained shall have, nor shall it be deemed to have, modified, changed or otherwise have affected the terms and provisions of the Employment Agreement between the BOARD and the SUPERINTENDENT, which agreement remains in full force and effect without diminution, including all continuing rights to indemnification and legal representation, except as specifically modified by this Agreement. The SUPERINTENDENT shall continue to perform all of the duties and exercise all of the powers of a superintendent of schools through June 30, 2008, as long as she complies with the reasonable instructions and policies of the BOARD and conforms to the normative standards of conduct and performance generally applicable to superintendents of schools in the State of New York. The BOARD shall not seek termination of the services of the SUPERINTENDENT for any act or omission or alleged act or omission prior to the date on which this Agreement has been executed.

4. In addition to the salary and benefits payable to the SUPERINTENDENT between the date of this Agreement and June 30, 2008 pursuant to the preceding paragraph:

(a) the DISTRICT shall pay the SUPERINTENDENT the additional gross sum of \$650,000.00 no later than June 30, 2007. This payment represents

compensation for loss of salary, benefits and other losses (including loss of credited service for retirement benefits) incurred by the SUPERINTENDENT as a result of her resignation and relinquishment of her rights under the Employment Agreement to the extent set forth herein. The SUPERINTENDENT shall be solely responsible for the payment of any and all taxes to all taxing authorities attributable to said payment; and

(b) the District shall provide the SUPERINTENDENT with continued health care coverage (medical and dental) for her and/or her family to the same extent provided to active professional employees of the District, for the remainder of her life at no cost to her and/or her family. The health care plan to be provided shall be the health care plan the DISTRICT provides to its active professional employees (or upon taking service retirement pursuant to the applicable rules of the New York State Teachers Retirement System to retirees), as the same be amended, modified or changed from time to time in the future. It is specifically understood that the level of benefits and health care plan granted to the SUPERINTENDENT may change and/or be modified in the future to the extent of changes and/or modification of the health care plan and/or benefit level that is then extended to active professional employees, or retirees, as the case may be. Notwithstanding the

foregoing, the DISTRICT reserves the right to provide the level of health care benefits required by this Agreement to the SUPERINTENDENT through an insured health plan, or a DISTRICT self-funded plan (or combination thereof), and/or in conjunction with benefits provided under Medicare and/or any other available state or federal law or program that may in the future provide a health benefit to the SUPERINTENDENT. The SUPERINTENDENT has no obligation to participate in any health care program that may be offered in connection with any subsequent employment she may obtain and any such participation (or decision not to participate) shall not be deemed to reduce the DISTRICT'S obligations hereunder.

5. (a) The SUPERINTENDENT warrants and represents that she has not filed any action, complaint, proceeding, charge, grievance or arbitration or any other proceeding, administrative or judicial, against the BOARD, its members, officers, employees and agents. The SUPERINTENDENT hereby covenants and agrees not to file any action, complaint, proceeding, charge, grievance or arbitration, nor commence any other proceeding, administrative or judicial, against the BOARD, its members, officers, employees and agents in any court of law, admiralty or equity, or before any administrative agency or arbitrator, seeking damages or other remedies on the SUPERINTENDENT'S own behalf, with respect

to her relationship with the BOARD, her employment with the BOARD, or respecting any matters which were or could have been claimed or otherwise arising on or prior to the date of execution of this Agreement, except to the extent that any such claim concerns an allegation that the BOARD and/or the DISTRICT has failed to comply with any obligations created by this Agreement.

(b) The BOARD warrants and represents that it has not filed any action, complaint, proceeding, charge, grievance or arbitration or any other proceeding, administrative or judicial, against the SUPERINTENDENT. The BOARD, on behalf of itself and its members, officers, employees and agents, and the DISTRICT, hereby covenants and agrees not to file, nor, directly or indirectly, to cause, encourage or instigate anyone else to file, any action, complaint, proceeding, charge, grievance or arbitration, nor commence any other proceeding, administrative or judicial, against the SUPERINTENDENT in any court of law, admiralty or equity or before any administrative agency or arbitrator seeking damages or other remedies with respect to her relationship with the BOARD, her employment with the BOARD, or respecting any matters which were or could have been claimed or otherwise arising on or prior to the date of execution of this Agreement, except to the extent that any such claim concerns an allegation that the

SUPERINTENDENT has failed to comply with any obligations created by this Agreement.

6. (a) (i) The SUPERINTENDENT, for and in consideration of the payments hereunder, hereby releases and forever discharges, and by this instrument does release and forever discharge the BEDFORD CENTRAL SCHOOL DISTRICT, its members, officers, employees, agents, and independent contractors, and the BOARD OF EDUCATION OF THE BEDFORD CENTRAL SCHOOL DISTRICT, its members, individually and in their official capacity, its officers, employees, agents, and independent contractors (collectively referred to in this Paragraph six (6) and in Paragraph seven (7) below as the "DISTRICT ENTITIES AND PERSONS") of and from all actions, causes of action, suits, charges, complaints, proceedings, grievances, obligations, costs, losses, damages, injuries, attorneys' fees, debts, dues, sums of money, accountings, covenants, contracts, controversies, agreements and promises of any form whatsoever (collectively referred to as "claims") including, but not limited to, any claims in law, equity, contract, tort or those claims which were or could have been alleged up until the date of execution of this Agreement, or any claims arising under any and all federal, state, county, or local statutes, laws, rules and regulations pertaining to

employment, as well as any and all claims under state or federal contract or tort law against the DISTRICT ENTITIES AND PERSONS whether known or unknown, unforeseen, unanticipated, unsuspected, or latent which she, her heirs, executors, administrators, successors and assigns ever had, now have or hereafter can, shall or may have for, upon or by reason of any matter, cause or thing whatsoever from the beginning of the world to the date of execution of this Agreement, except a claim that DISTRICT ENTITIES AND PERSONS have failed to comply with any obligations created by this Agreement.

(ii) Without limiting the generality of the foregoing, the SUPERINTENDENT agrees that she knowingly and voluntarily waives all rights she has or may have (or that of anyone on her behalf) to commence or prosecute any lawsuit, charge, claim, complaint, or other legal proceeding or action against the DISTRICT ENTITIES AND PERSONS whether an individual or class action, with any administrative agency, court or other forum, including, but not limited to, any claim arising under a duty to provide the SUPERINTENDENT a "name clearing" arising under the state or federal constitution, claims brought under the Americans with Disabilities Act of 1990, 42 U.S.C. §12101 et. seq., Title VII of the Civil Rights Act of 1964, 42 U.S.C. §2000e et. seq., the Pregnancy Discrimination

Act of 1978, 42 U.S.C. §2000e(k), the Age Discrimination in Employment Act, 29 U.S.C. §621 et. seq., the Older Workers Benefit Protection Act of 1990, Pub. L. No. 101-433, 104 Stat. 978 (1990), the Civil Rights Act of 1991 No. 102-166, 105 Stat. 1071 (1991), 42 U.S.C. §1981, 42 U.S.C. §1983, the Fair Labor Standards Act, 29 U.S.C. §201 et. seq., the National Labor Relations Act, 29 U.S.C. §151 et. seq., the Equal Pay Act of 1963, 29 U.S.C. §206(d), the Employees Retirement Income Security Act of 1974, 29 U.S.C. §1001 et. seq., the Rehabilitation Act of 1973, 29 U.S.C. §791 et. seq., the Family and Medical Leave Act of 1993, 29 U.S.C. §2601 et. seq., the New York State Human Rights Law, N.Y. Executive Law §290 et. seq., Title IX, 20 U.S.C. §1681 et. seq., the New York Civil Rights Law, N.Y. Civil Rights Law §79-e et. seq., the New York Equal Pay Law, N.Y. Labor Law §198, the New York Workers' Compensation Law, N.Y. Workers' Compensation Law §1 et. seq., and the New York Education Law, including, but not limited, to §§3028 and 1711, under any and all other federal, state and local equal employment, fair employment and civil or human rights law (whether statutory, regulatory or decisional), under the statutory, regulatory or common law, including, but not limited, to any and all tort claims (e.g., assault, battery, false imprisonment, defamation, intentional infliction of emotional distress, negligent

infliction of emotional distress, wrongful termination, negligent hiring, supervision and/or retention, conversion, interference with contract, abusive discharge) and under any and all federal, state, and local laws relating to employment and/or gender discrimination, pregnancy discrimination, sexual and/or other harassment, retaliation, benefits, labor or employment standards, or retaliation.

7. The DISTRICT ENTITIES AND PERSONS, for and in consideration of the payments hereunder, hereby releases and forever discharges, and by this instrument do release and forever discharge the SUPERINTENDENT, her heirs, executors, administrators, successors and assigns of and from all actions, causes of action, suits, charges, complaints, proceedings, grievances, obligations, costs, losses, damages, injuries, attorneys' fees, debts, dues, sums of money, accountings, covenants, contracts, controversies, agreements and promises of any form whatsoever (collectively referred to as "claims") including, but not limited, to any claims in law, equity, contract, tort or those claims which were or could have been alleged by or on behalf of any of them, up until the date of execution of this Agreement, or any claims arising under any and all federal, state, county, or local statutes, laws, rules and regulations pertaining to employment, as well as any and all claims under state or federal contract or tort law against the

SUPERINTENDENT whether known or unknown, unforeseen, unanticipated, unsuspected, or latent which they ever had, now have or hereafter can, shall or may have for, upon or by reason of any matter, cause or thing whatsoever from the beginning of the world to the date of execution of this Agreement, except a claim that SUPERINTENDENT has failed to comply with any obligations created by this Agreement.

8. This Agreement shall not be effective or binding upon the SUPERINTENDENT and/or the BOARD unless and until it is approved by a majority of the BOARD by formal resolution.

9. The parties expressly agree that in their joint interest and in the interest of the DISTRICT and its students, they shall commit themselves to working in a harmonious and respectful manner and shall cooperate and communicate with each other freely and candidly so as to allow each to perform their respective duties through June 30, 2008; that neither party shall disparage the other prior to such date or at any time thereafter; and that in dealing with decisions involving the recruitment, retention, promotion, transfer and discipline of staff and administrators of the DISTRICT, neither party shall engage in acts of retaliation or any discriminatory or demeaning treatment. In furtherance of the foregoing, the

SUPERINTENDENT shall refrain from any and all retaliation against any District employees or independent contractors of the District because the employee or independent contractor has made a charge, testified, assisted, or participated in any manner in any investigation, or proceeding respecting the SUPERINTENDENT, or who in any way acted against the interests of the SUPERINTENDENT with respect to such charge, testimony, or assistance. The SUPERINTENDENT shall not malign, discredit or in any way retaliate or act in a derogatory, discriminatory or prejudicial manner against or among such persons including, but not limited, to the grant or denial of tenure, the employee's duties, wages, hours, benefits or working conditions. Similarly, the BOARD and the DISTRICT shall refrain from any and all retaliation against the SUPERINTENDENT and will not act upon any claims, complaints or charges made by any DISTRICT employees or independent contractor which (i) relate to any conduct prior to the date of this Agreement, or (ii) which are made out of ill will or for any retaliatory, malicious or other non-bona fide purpose. In the event that either party has reason to believe that the other party has, may have, or is about to engage in conduct which would violate the terms of this Paragraph, such party shall provide written notice of its concerns to the other party within ten (10) business days after learning of such conduct.

10. The BOARD and the DISTRICT agree that they will cooperate with the SUPERINTENDENT and reasonably assist her in connection with her efforts to find a new position. In this respect, the BOARD and the DISTRICT agree that the SUPERINTENDENT will be given good references, that the BOARD and the DISTRICT will allow appropriate site visits, and that the BOARD and the DISTRICT will direct all inquiries and requests for references solely to a Board Member so designated by the SUPERINTENDENT in writing.

11. The parties represent and acknowledge that no representation, statement, promise, inducement, threat or suggestion has been made by the other party and/or their attorneys, to influence them to sign this Agreement, except such statements as are expressly set forth herein.

12. The SUPERINTENDENT acknowledges and agrees that she has been given a sufficient time period, at least twenty-one (21) days in accordance with the Age Discrimination in Employment Act, 29 U.S.C. §621 et. seq., and the Older Workers Benefit Protection Act of 1990, Pub. L. No. 101-433, 104 Stat. 978 (1990), within which to consider this Agreement, that she has read this Agreement, that she has fully discussed the terms of this Agreement with legal counsel of her own choosing and that she has fully reviewed with legal counsel the claims and

rights which are being released and her obligations under this Agreement. The SUPERINTENDENT further acknowledges that, pursuant to the Age Discrimination in Employment Act, 29 U.S.C. §621 et. seq., and the Older Workers Benefit Protection Act of 1990, Pub. L. No. 101-433, 104 Stat. 978 (1990), for a period of seven (7) days following execution of this Agreement, the SUPERINTENDENT may revoke this Agreement and the Agreement shall not become effective or enforceable until the revocation period has expired. The SUPERINTENDENT further acknowledges and agrees that, in deciding to execute this Agreement, she has had the opportunity to ask any questions that she may have of anyone, including legal counsel and other personal advisors of her own choosing, that she has consulted with legal counsel and personal advisors of her own choosing, and that she has executed this Agreement freely, voluntarily, and of her own will, and with full and complete understanding of its terms and effects.

13. The parties acknowledge that this Agreement represents the full, final, and complete resolution of this matter so that this Agreement supersedes all prior agreements, written or oral, between the parties, except to the extent otherwise provided herein. This Agreement may not be changed except by an instrument in writing signed by the parties.

14. Except as required by law and specifically by the Freedom of Information Law of the State of New York, or except pursuant to the direction of the Commissioner of Education or pursuant to an order of a court of competent jurisdiction, the terms of this Agreement, the consideration given hereunder, the identity of the parties released under this Agreement and the documents and correspondence between the parties and the discussions and negotiations concerning this Agreement are deemed confidential, and shall not be disclosed by any party to any individual or entity not a party to this Agreement. Without limiting the generality of the foregoing, with the exception of furnishing a copy of the annexed "Press Release" together with a statement of "no further comments," each party to this Agreement shall not initiate, nor respond to, nor in any way participate in, nor contribute to any discussion, public, private or otherwise, nor take part in any other form of publicity concerning, nor in any way relating to, the terms of this document and the disputes between the parties that led to any of the differences and/or disputes between them. During the course of interviews for subsequent employment, the Superintendent can respond to inquiries regarding reasons for the leaving the District in a manner consistent with the content of the Press Release.

15. It is the mutual intention of the parties that this Agreement be valid and fully enforceable. Neither party will take, procure or encourage any effort to contest the validity of this Agreement, whether in its entirety or with respect to any provision hereof. In the event that the validity of this Agreement, or any provision hereof, is challenged by any third party in any court or before any administrative body or tribunal, the BOARD will promptly and effectively oppose such challenge, and will defend and indemnify the SUPERINTENDENT against and with respect to such challenge, including, but not limited, to the SUPERINTENDENT's reasonable costs and attorneys' fees, and any judgment which may be rendered as a result thereof to the extent permitted by law and in accordance with the provisions of the Education Law and Public Officers Law of the State of New York.

16. If any provision of this Agreement is determined to be invalid or unenforceable by a court of competent jurisdiction, it is understood and agreed that such provision shall be deemed deleted and the balance of this Agreement without such deleted provision, if otherwise lawful, shall remain in full force and effect, unless the effect of such invalidity or unenforceability would be such as to deprive either party of the material benefits of its bargain as set forth herein. It is expressly acknowledged by both parties that any determination that Paragraphs three (3)

and/or four (4) are invalid or unenforceable in whole or in part shall constitute a deprivation to the SUPERINTENDENT of the material benefits of her bargain. In the event that either party is deprived of the material benefits of its bargain as defined in this Paragraph, this Agreement and the resignation provided pursuant thereto shall become null and void and the Employment Agreement will continue in full force and effect as if it had never been modified. This Agreement shall be governed by and construed and interpreted in accordance with the laws of the State of New York.

17. The parties agree to cooperate fully and execute this Agreement and all supplementary documents and to take any and all additional action which may be necessary or appropriate to give full force and effect to the basic terms and intent of this Agreement.

THE BOARD OF EDUCATION
OF THE BEDFORD CENTRAL SCHOOL DISTRICT

BY: 

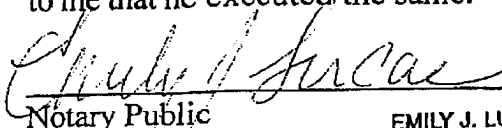
BRAD SACKS, PRESIDENT

BY: 

DEBRA JACKSON,
SUPERINTENDENT OF SCHOOLS

State of New York)
) s.s.:
County of Westchester)

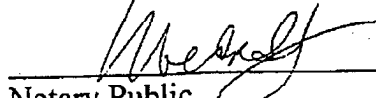
On *June 12*, 2007, before me personally came BRAD SACKS, PRESIDENT OF THE BOARD OF EDUCATION OF THE BEDFORD CENTRAL SCHOOL DISTRICT, to me known, and known to me to be the individual described herein, and who executed the foregoing Agreement, and duly acknowledged to me that he executed the same.



Notary Public
EMILY J. LUCAS
Notary Public, State of New York
No. 02LU6126601
Qualified in Orange County
Commission Expires May 9, 20 *09*

State of New York)
) s.s.:
County of Westchester)

On *8th day of June* 2007, before me personally came DEBRA JACKSON, to me known, and known to me to be he individual described herein, and who executed the foregoing Agreement, and duly acknowledged to me that she executed the same.



Notary Public
MICHELLE J. CUHILAN
Notary Public, State of New York
No. 01CU4022201
Qualified in Westchester County
Commission Expires March 13, *2010*

From: Camillo M. Santomero
Sent: Thursday, June 12, 2008 8:07 AM
To: 'LaColla, Carole'
Subject: FOIL Request

Contacts: Carole LaColla

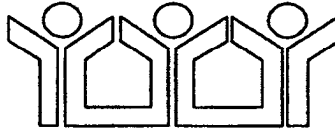
Under the NYS Freedom of Information Law, I am requesting any and all records relating to the "certain dispute" between the Bedford Central Board of Education and Superintendent of Schools Dr. Debra Jackson that resulted in her termination agreement.

After consulting with a FOIL expert, based upon previous court rulings, BOE and district records relating to the "dispute" cited in the agreement are covered under FOIL, regardless of any confidentiality clause between the board and the superintendent.

Please let me know your response to this request as soon as possible, and if you need any further from me.

Camillo M. Santomero

(914) 242-9118
393 Guard Hill Road
Bedford, NY 10506



BEDFORD CENTRAL SCHOOL DISTRICT
THE FOX LANE CAMPUS, P.O. BOX 180
MOUNT KISCO, NEW YORK 10549

Carole LaColla, District Clerk
Board of Education

914-241-6011 (phone)
914-241-6004 (fax)

July 10, 2008

Mr. Camillo M. Santomero
393 Guard Hill Road
Bedford NY 10506

Dear Mr. Santomero:

I write in response to your FOIL request for "all records relating to the certain dispute between the Bedford Board of Education and Superintendent of Schools Dr. Debra Jackson that resulted in her termination agreement". I regret to inform you that your request is denied. The release of these records constitutes an unwarranted invasion of privacy and your request implicates a confidential matter.

Please be aware that an applicant denied access to a public record may file an appeal by delivering a copy of the request and a copy of the denial to the District Clerk within 30 days after the denial from which such appeal is taken. The appeal will be submitted to the Board for decision. The applicant and the New York State Committee on Open Government will be informed of the Board's determination in writing within ten business days of receipt of an appeal. The District Clerk shall transmit to the Committee on Open Government photocopies of all appeals and determinations.

Sincerely,

A handwritten signature in black ink, appearing to read "Carole LaColla", with a long horizontal flourish extending to the right.

Carole LaColla
District Clerk

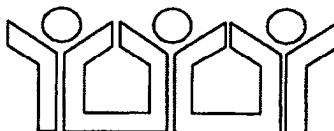
Camillo M. Santomero

From: Camillo M. Santomero
Sent: Friday, July 18, 2008 7:49 AM
To: 'LaColla, Carole'
Subject: Foil Appeal
Attachments: Jackson Foil Denied 7 10 08.tif

I hereby appeal the districts decision to deny my FOIL request concerning the Debra Jackson information. Your denial dated July 10, 2008 is attached.

Camillo M. Santomero

(914) 242-9118
Rabbit Hill
Saries Street
Mount Kisco, NY 10549



BEDFORD CENTRAL SCHOOL DISTRICT
THE FOX LANE CAMPUS, P.O. BOX 180
MOUNT KISCO, NEW YORK 10549

Carole LaColla, District Clerk
Board of Education

914-241-6011 (phone)
914-241-6004 (fax)

July 10, 2008

Mr. Camillo M. Santomero
393 Guard Hill Road
Bedford NY 10506

Dear Mr. Santomero:

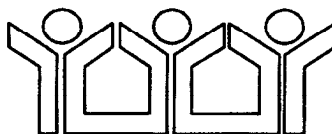
I write in response to your FOIL request for "all records relating to the certain dispute between the Bedford Board of Education and Superintendent of Schools Dr. Debra Jackson that resulted in her termination agreement". I regret to inform you that your request is denied. The release of these records constitutes an unwarranted invasion of privacy and your request implicates a confidential matter.

Please be aware that an applicant denied access to a public record may file an appeal by delivering a copy of the request and a copy of the denial to the District Clerk within 30 days after the denial from which such appeal is taken.. The appeal will be submitted to the Board for decision. The applicant and the New York State Committee on Open Government will be informed of the Board's determination in writing within ten business days of receipt of an appeal. The District Clerk shall transmit to the Committee on Open Government photocopies of all appeals and determinations.

Sincerely,

A handwritten signature in black ink, appearing to read "Carole LaColla", with a long horizontal flourish extending to the right.

Carole LaColla
District Clerk



BEDFORD CENTRAL SCHOOL DISTRICT
BOARD OF EDUCATION

P.O. BOX 180, MOUNT KISCO, NEW YORK 10549
914-241-6010 914-241-6004 (fax)
boe@bcsdny.org

SUSAN ELION WOLLIN
President
DONNA MARINO
Vice President

MARK CHERNIS
BARBARA GROSSMAN
ERIC KARLE
PAULA KUMAR
MARC VANDENHOECK

August 7, 2008

Camillo Santomero
Rabbit Hill
Sarles Street
Mount Kisco, NY 10549

Re: FOIL APPEAL

Dear Mr. Santomero

The Board of Education is in receipt of your Freedom of Information Law (FOIL) appeal, dated July 18, 2008. In your appeal you request, "...any and all documents pertaining to a certain dispute that occurred between the Bedford Central Board of Education and Superintendent of Schools Dr. Debra Jackson..." The Board of Education reviewed your appeal in executive session on August 6, 2008.

The Board of Education hereby denies your appeal. Disclosure of the documents requested would constitute an unwarranted invasion of privacy. As outlined in the Freedom of Information Law, disclosure of allegations or unsubstantiated charges would result in an unwarranted invasion of personal privacy¹.

Furthermore, the Board of Education is denying access, concluding that such records are intra-agency material involving non-final policy or determinations. (Herald Company v. School District of the City of Syracuse, 104 Misc.2d 1041, 1046).

Thank you for your attention to this matter.

Sincerely,

Susan Elion Wollin, President
Board of Education

c: Robert Freeman, Committee on Open Government

¹ See Public Officers Law §§ 87(2)(b); 89(2)(b)(i)

PRELIMINARY STATEMENT

This proceeding under CPLR Article 78 and Public Officers Law Article 6 (the New York State Freedom of Information Law) seeks a judgment ordering Respondents to provide copies of “any and all records relating to the ‘certain dispute’ between the Bedford Central Board of Education and Superintendent of Schools Dr. Debra Jackson that resulted in her termination agreement.”

PARTIES

Petitioner Camillo M. Santomero (“Petitioner”) is a resident of the State of New York. He is a former member of the Board of Education of the Bedford Central School District and is active in local administration and politics (Petition ¶ 2).

Respondent Board of Education of the Bedford Central School District, (the “Board”) is the administrative body charged with operation of the Bedford Central School District (the “District”), which is located in the town of Bedford, County of Westchester, State of New York. The Board is an “agency” performing a governmental function within the meaning of Article 6 of the Public Officers Law, commonly known as the “Freedom of Information Law” (“FOIL”) and, as such, is subject to the provisions of that law (Petition ¶ 3).

Respondent Carole Lacolla (“LaColla”) is the District Clerk of the Board and the person who, on behalf of the Board, denied Petitioner access to the information he requested (Petition ¶ 4). Respondent Susan Elion Wollin (“Wollin”) is the President of the Board and the person who affirmed the Board’s denial of access to the information requested by the Petitioner (Petition ¶ 5). Respondent Dr. Debra Jackson (“Dr. Jackson”) is the former Superintendent of the District who, along with the Board, is a party to the Agreement central to this dispute (Petition ¶ 6).

FACTUAL BACKGROUND

In September 2007, the high-performing and affluent Bedford Central School District was rocked by scandal when the principal of Bedford Hills Elementary School was brought up on criminal charges for failing to report allegations of the rape of a 9-year-old girl to child protection officials. According to the complaint filed against the principal in Court, the principal was informed of the allegations of abuse in December 2006 or January 2007, yet failed to notify state officials or the school superintendent who, at the time, was Dr. Jackson. (*See Exhibit A to Petition, New York Times article dated 9/11/06*).

Dr. Jackson had been hired as Superintendent of the District pursuant to a written agreement between herself and the Board dated July 10, 2006 (the "Employment Agreement"). Under the Employment Agreement, Dr. Jackson was to serve as the chief administrative officer of the Bedford Central School District for the period July 1, 2006 through June 30, 2011 (Petition ¶ 8).

According to the Board and Dr. Jackson, on or about June 2007, a "dispute" arose between Dr. Jackson and the Board "with regard to the Superintendent's performance of her duties" (Petition ¶ 9). On or about June 2007, the Board and Dr. Jackson entered into a twenty page Settlement Agreement and Mutual Release" (the "Settlement Agreement"). (*See Exhibit B to Petition*).

Pursuant to the Settlement Agreement, among other things, (a) Dr. Jackson tendered her resignation effective June 30, 2008 (*Id.* ¶ 2); (b) the parties agreed that, until the effective date of Dr. Jackson's resignation, the terms of the Employment Agreement would remain in full force and effect (*Id.* ¶ 3); (c) the Board agreed to pay Dr. Jackson the sum of \$650,000.00 no later than June 30, 2007, and further agreed to provide health care coverage (medical and dental) for her

and her family for the remainder of her life at no cost (*Id.* ¶ 4); (d) the Board agreed to give Dr. Jackson “good references” and to indemnify her if the Settlement Agreement was challenged by any party (*Id.* ¶¶ 10, 15); and (e) the parties agreed not to bring suit or retaliate against each other and to keep the terms of, and negotiations concerning, the Settlement Agreement confidential (*Id.* ¶¶ 5-7, 9, 14).

The only explanation proffered in the Settlement Agreement for the separation brokered therein was that “a certain dispute has arisen between the Superintendent and the Board with regard to the Superintendent’s performance of her duties.” (*Id.* at p. 2). In the official Press Release regarding the matter, the parties stated merely that “terminating the last three years of [Jackson’s] five year contract ... was in the mutual interest of both parties.” (*See* Press Release attached to Petition Exhibit B, Settlement Agreement).

PROCEDURAL BACKGROUND

On August 12, 2008, Petitioner submitted a request to LaColla, as representative of the Board, for access to certain records pursuant to Public Officers Law Article 6 (*see* Exhibit C to Petition). In his request, Petitioner sought the following records:

any and all records relating to the “certain dispute” between the Bedford Central Board of Education and Superintendent of Schools Dr. Debra Jackson that resulted in her termination agreement.

Id.

On July 10, 2008, the Board denied Petitioner’s request on the ground that “the release of these records constitutes an unwarranted invasion of privacy and your request implicates a confidential matter” (*see* Exhibit D to Petition). The Board proffered no support for this conclusion. On July 18, 2008, pursuant to Public Officers Law § 89, Petitioner filed an appeal

from the Board's July 10, 2008 denial. (*See* Exhibit E to Petition).

On August 7, 2008, the Board, in a letter signed by Wollin, denied Petitioner's appeal, stating:

Disclosure of the records requested would constitute an unwarranted invasion of privacy. As outlined in the Freedom of Information Law, disclosure of allegations or unsubstantiated charges would result in an unwarranted invasion of privacy [citing, in footnote, POL §§87(2)(b), 89(2)(b)(i)]. Furthermore, the Board of Education is denying access, concluding that such records are intra-agency material involving non-final policy or determinations. (Herald Company. v. School Dist. of City of Syracuse, 104 Misc.2d 1041, 1046).

(*See* Exhibit F to Petition).

Petitioner has exhausted his administrative remedies, and review by this Court is ripe and otherwise appropriate pursuant to, and in accordance with, CPLR Article 78 and Public Officers Law Article 6.

GROUND FOR RELIEF

Respondents' determination to deny the requested records is arbitrary and capricious and constitutes an abuse of discretion. Petitioner is legally entitled to the records he requested, in that they are agency records.

The Board's denials of Petitioner's request and appeal were purportedly based (a) on privacy issues, as referenced in POL §§ 87(2)(b), 89(2)(b)(i); and (b) the conclusion that the records Petitioner requested purportedly constitute intra-agency materials, referencing *Herald Co. v. School Dist. of City of Syracuse*, 104 Misc.2d 1041, 430 N.Y.S.2d 460 (Sup. Ct. Onondaga Co. 1980). Both justifications are specious at best.

**The Board Has Failed To Demonstrate
That The Records Petitioner Seeks Are Exempt From Disclosure.**

Unless they fall within one of the enumerated exemptions in Public Officers Law § 87(2), all government records are presumptively open for public inspection and copying. *Gould v. New York City Police Dept.*, 89 N.Y.2d 267, 274-75, 653 N.Y.S.2d 54, 57 (1996). It is well-settled that “the ‘exemptions are to be narrowly construed, with the burden resting on the agency to demonstrate that the requested material indeed qualifies for exemption.’” *Id.* at 275, 653 N.Y.S.2d at 57 (quoting *Matter of Hanig v. State of New York Dept. of Motor Vehicles*, 79 N.Y.2d 106, 109, 580 N.Y.S.2d 715 (1992) and citing Public Officers Law § 89[4][b]).

As the Court of Appeals has readily acknowledged, “to invoke one of the exemptions of section 87(2), the agency must articulate ‘particularized and specific justification’ for not disclosing requested documents.” *Id.*, 653 N.Y.S.2d at 57 (citation omitted). If the Court is unable to determine whether withheld documents fall entirely within the scope of the asserted exemption, it should conduct an *in camera* inspection and order disclosure of all nonexempt material. *Id.*, 653 N.Y.S.2d at 57 (citations omitted).

In both its denial of Petitioner’s initial request and his appeal, the Board tacitly acknowledges that records concerning the “dispute” between Dr. Jackson and the Board exist, as the Settlement Agreement confirms. However, the Board utterly fails to provide the required “particularized and specific justification” for its refusal to provide the records sought.

**The Board Fails To Demonstrate That The Records Petitioner Seeks
Would Result In An Unwarranted Invasion Of Privacy.**

The Board’s first purported reason for seeking to avoid production is its summary conclusion that “[d]isclosure of the records requested would constitute an unwarranted invasion of privacy.”

Patently, this conclusory justification is insufficient. *See, e.g., Clinch v. Town of Hyde Park*, 173 Misc.2d 497, 661 N.Y.S.2d 786 (Sup. Ct. Dutchess Co. 1997) (where FOIL exemption claimed, “mere conclusory allegations, without factual support, are insufficient to sustain an agency’s burden of proof”); *Belth v. New York State Dept. of Ins.*, 189 Misc.2d 508, 733 N.Y.S.2d 833 (Sup. Ct. N.Y. Co. 2001) (same); *New York Civil Liberties Union v. New York City Police Dept.*, 20 Misc.3d 1108(A), 2008 WL 2522233, (Sup. Ct. N.Y. Co., May 7, 2008) (agency’s denial of administrative appeal by letter which merely set forth list of allegedly applicable statutory exemptions and briefly explained same, insufficient under FOIL).

Further, notwithstanding the Board’s averment that “... disclosure of allegations or unsubstantiated charges would result in an unwarranted invasion of privacy,” the Board fails even to claim that any allegations were made or that any charges were ever threatened or filed against Dr. Jackson or anyone else. To the contrary, the Settlement Agreement refers merely to a “dispute” between the parties, and the official position, stated in the accompanying press release, is simply that a parting was in the parties’ “mutual interest.”

Indeed, the acknowledged “dispute” on its face encompasses facts and circumstances that go well beyond the mere personal privacy interests of Dr. Jackson. Indeed, the “dispute” on its face appears to involve the conduct of parties other than Dr. Jackson, such as the Board itself, and implicates public policy considerations involving the expenditure of substantial taxpayer funds.

Under these circumstances, the requested records must be released to Petitioner, or, at the very least, provided to the Court for *in camera* inspection.

The Board Fails To Demonstrate That The Records Petitioner Seeks Are Intra-Agency Material Exempt From Disclosure.

The Board's additional vacant assertion --- articulated for the first time in its denial of Petitioner's appeal --- that the records requested are exempt from disclosure because they constitute "intra agency material involving non-final or policy determinations" is equally without merit.

Herald Co. v. School Dist. of City of Syracuse, supra, the sole case cited by the Board in support of its position, is distinguishable on its face and has no application here. *Herald Co.* involved an attempt by a newspaper publisher to compel a school district to produce the name of, and charges against, a teacher charged with misconduct in a pending private disciplinary proceeding. The court found, *inter alia*, that the requested information was inter-agency or intra-agency material exempt from disclosure under POL § 87(2)(g), since the name of and charges against the teacher were merely part of unproved allegations and were thus predetermination materials exempt from disclosure.

However, the records sought by Petitioner have no relation to the information sought in *Herald Co.* and the Board has made no attempt to show otherwise. In this matter, the identity of the parties and the terms of the settlement they reached are already known. These terms cannot possibly constitute "non-final policy or determinations" --- to the contrary, they are unquestionably final. Nor has the Board alleged that any charges were filed against Dr. Jackson. Moreover, as stated above, the acknowledged "dispute" on its face encompasses facts and circumstances that go well beyond mere unproved allegations against Dr. Jackson; may involve the conduct of parties other than Dr. Jackson, such as the Board itself; and, since they resulted in final settlement terms that required and will require the expenditure of substantial taxpayer

funds, clearly affect the public interest in ways that mere unsubstantiated allegations do not.

Thus, none of the considerations discussed in *Herald Co.* are applicable here. *See also The New York Times Co. v. City of New York Fire Dept.*, 4 N.Y.3d 477, 487, 796 N.Y.S.2d 302, 307 (2005) (affirming lower court ruling that intra-agency materials “be disclosed to the extent they consist of factual statements or instructions affecting the public...”); *New York 1 News v. Office of President of Borough of Staten Island*, 231 A.D.2d 524, 647 N.Y.S.2d 270 (2nd Dept. 1996) (investigator’s report on charges of racial insensitivity against public employee not exempt from disclosure under FOIL once borough president relied on and incorporated investigator’s findings in final decision; exemption for intra-agency materials could not apply to final agency policy or decisions, and investigator’s findings were expressly adopted by borough president in explaining his decision); *In re Jasmine G.*, 35 A.D.3d 604, 828 N.Y.S.2d 107 (2nd Dept. 2006) (agency precluded from claiming that agency materials were exempt from disclosure under POL 87(2)(g) where agency witness testified that agency employees relied upon materials in reaching conclusions as to the dispositional recommendation); *Mothers on the Move, Inc. v. Messer*, 236 A.D.2d 408, 652 N.Y.S.2d 773 (2nd Dept. 1997) (finding, inter alia, factual observations not exempt from disclosure, even in documents issued before final decision); *Miracle Mile Associates v. Yudelson*, 68 A.D.2d 176, 417 N.Y.S.2d 142 (4th Dept. 1979) (POL 87(2)(b) does not authorize agency to throw protective blanket over all information by casting it in the form of internal memo; question in each case is whether possession of contested document would be injurious to consultative functions of government that the privilege of nondisclosure protects), *appeal denied*, 48 N.Y.2d 606, 421 N.Y.S.2d 1031, *appeal denied*, 48 N.Y.2d 706, 422 N.Y.S.2d 68 (1979).

ATTORNEY'S FEES AND COSTS

Respondents have withheld the records requested by Petitioner, although they lack a reasonable basis to do so. If Petitioner prevails in this proceeding, the Court should, pursuant to Public Officers Law § 89(4)(c), award Petitioner his reasonable attorney's fees and other litigation costs incurred in connection with this proceeding.

CONCLUSION

The official records requested by Petitioner are clearly of significant interest to the general public. They concern the origins of the Board's extraordinary agreement to make an immediate payment to an employee of \$650,000.00, plus indeterminate future expenditures for medical and dental care for the employee and her family for the rest of her life --- a total obligation that may well amount to approximately one million dollars of taxpayer money. The sole reason given for the Board's apparently supine concession is that, without it, "protracted and expensive litigation might result" which, for undisclosed reasons known solely to the parties, "... would not be in the interest of the School District, its students, staff and taxpayers."


However, contrary to the summary conclusion reached by the Board in denying Petitioner's request for records and his appeal, the School District, students, staff and taxpayers are entitled to information from which they might learn the basis for the Settlement Agreement's extraordinary terms and decide themselves whether they were justified --- or whether other considerations, having nothing to do with an unwarranted invasion of Dr. Jackson's privacy, were the motivation.

Consequently, all records Petitioner requests must be provided. The final determination of Respondents has denied Petitioner his right of access to agency records, a right that is guaranteed by Public Officers Law Article 6. The Board must not be permitted to avoid disclosure of the

basis for the extraordinary settlement it reached with Dr. Jackson, a matter of compelling public interest.

Dated: New York, New York
November 12, 2008

Law Office of Robert A. Sternbach

By:  _____

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Robert A. Sternbach, Esq.
Of Counsel

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

In the Matter of an
Article 78 Proceeding

CAMILLO M. SANTOMERO,

Petitioner,

-against-

BOARD OF EDUCATION OF THE BEDFORD
CENTRAL SCHOOL DISTRICT,
SUSAN ELION WOLLIN, as President of the
BOARD OF EDUCATION OF THE BEDFORD
CENTRAL SCHOOL DISTRICT,
CAROLE LACOLLA, as District Clerk of the
BOARD OF EDUCATION OF THE BEDFORD
CENTRAL SCHOOL DISTRICT
and DR. DEBRA JACKSON,

Respondents.

NOTICE OF PETITION

Index. No. 25404-2008

Date Purchased:

November 17, 2008

PLEASE TAKE NOTICE that, upon the annexed Verified Petition of Camillo M. Santomero, with Exhibits annexed thereto and the accompanying Memorandum of Law, an application will be made to this Court, at the Courthouse, 111 Dr. Martin Luther King Jr. Blvd, White Plains, New York, at an IAS Part to be assigned, Room ____, on the **19th day of December, 2008**, at ____ 9:30 a.m., or as soon thereafter as counsel can be heard, for a judgment pursuant to CPLR Article 78:

(1) annulling the final determination of Respondents, dated August 7, 2008, which denied Petitioner's request for access to documents he requested on June 12, 2008, pursuant to Public Officers Law Article 6;

(2) directing Respondents to provide Petitioner with all such documents pursuant to Public Officers Law Article 6;

(3) ordering Respondents to pay the attorney's fees and other litigation costs reasonably incurred by Petitioner in connection with this proceeding; and

(4) granting Petitioner such other and further relief as the Court deems just and proper.

PLEASE TAKE FURTHER NOTICE, that pursuant to CPLR 7804(c), Petitioner demands that answering papers be served on the undersigned attorneys at least five days before the aforesaid date of hearing.

Petitioner designates Westchester County as the place of venue, the basis being that Westchester County is within the judicial district where Respondents made the determination complained of and in which the material events took place.

Dated: New York, New York
November 12, 2008

Law Office of Robert A. Sternbach

By:  _____

Robert A. Sternbach
Attorneys for Petitioner
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New York, New York 10016
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