

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

**DR. MARK GEIER, *et al.*,**

**Plaintiffs,**

**vs.**

**DEPARTMENT OF HEALTH AND  
HUMAN SERVICES, *et al.*,**

**Defendants.**

**Case No. 05-CV-1749(TFH)**

**DEFENDANT AMERICAN ACADEMY OF PEDIATRICS’  
REPLY IN SUPPORT OF ITS  
MOTION TO DISMISS AND/OR FOR SUMMARY JUDGMENT**

Defendant American Academy of Pediatrics (“AAP”), in further support of its motion pursuant to Rule 12(b)(6) to dismiss the Complaint for failure to state a claim and/or pursuant to Rule 56 for summary judgment, respectfully submits as follows:

1. On December 1, 2005, AAP filed its motion to dismiss and/or for summary judgment. In that motion, AAP established that the Complaint in this action for defamation and related claims should be dismissed because

- The statements at issue are not reasonably capable of conveying the defamatory meaning alleged by plaintiffs, or any defamatory meaning.
- The allegedly defamatory statements are not capable of reasonably being understood as actionable statements of fact.
- Plaintiffs’ claims for tortious interference are barred by the First Amendment and also fail at common law for multiple reasons.
- All of the causes of action are barred by the statute of limitations.

2. Pursuant to Local Civil Rule 7(b), plaintiffs were required to file any opposition to AAP's motion not later than December 12, 2005. By a series of motions, however, and with AAP's consent, plaintiffs obtained multiple extensions of the deadline for opposing AAP's motion, through and including January 30, 2006. *See* 01/26/06 Minute Order. By the same Order, AAP was given through March 3, 2006 to reply to plaintiffs' opposition.

3. Despite the long-passed January 30 deadline for opposing AAP's motion to dismiss and/or for summary judgment, plaintiffs have failed to oppose the motion and they have failed to seek any further extension of the deadline for their opposition. Local Civil Rule 7(b) provides that, if an opposition "memorandum is not filed within the prescribed time, the Court may treat the motion as conceded." AAP submits that its motion, which is meritorious, should now be deemed conceded and this action should be dismissed as against it, with prejudice, for the reasons stated in the motion.

WHEREFORE, AAP respectfully requests that its motion be granted and that judgment be entered in its favor.

**WITHDRAWAL OF REQUEST FOR HEARING**

In light of plaintiffs' lack of opposition to its motion, and pursuant to Local Civil Rule 7(f), AAP respectfully withdraws its request for a hearing on its motion.

Dated: March 2, 2006

Respectfully submitted,

LEVINE SULLIVAN KOCH & SCHULZ, L.L.P.

By: /s/ Jay Ward Brown

Jay Ward Brown (D.C. Bar No. 437686)

Adam J. Rappaport (D.C. Bar No. 479866)

1050 Seventeenth Street, N.W., Suite 800

Washington, DC 20036

(202) 508-1100

*Counsel for Defendant*

*American Academy of Pediatrics*

**CERTIFICATE OF SERVICE**

I hereby certify that on March 2, 2006, I caused true and correct copies of the foregoing Defendant American Academy of Pediatrics' Reply in Support of Its Motion to Dismiss and/or for Summary Judgment to be served by the Court's Electronic Case Filing System upon all parties scheduled for electronic notice, and on the following counsel via first-class mail:

James A. Moody, Esq.  
THE CULLEN LAW FIRM, P.L.L.C.  
1101 30th Street, N.W.  
Suite 300  
Washington, DC 20007

/s/ Adam J. Rappaport  
Adam J. Rappaport