



NEW YORK CITY LAW DEPARTMENT
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Press Release

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**APPELLATE COURT HOLDS UNANIMOUSLY THAT
FREEDOM OF INFORMATION LAW AND OPEN MEETINGS LAWS
DO NOT APPLY TO HOSTOS COMMUNITY COLLEGE SENATE**

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New York, July 16, 2004 – Reversing a lower Supreme Court decision, the Appellate Division, First Department unanimously held yesterday 5-0 in *Perez v. City University of New York* that the Hostos Community College Senate and its Executive Committee are not public bodies subject to either the Freedom of Information Law (FOIL) or the Open Meetings Law (OML). (FOIL provides that, subject to certain limitations, the public can have access to the records of public agencies; OML provides that all meetings of a public body -- i.e. a body for which a quorum is required to perform a public governmental function -- shall be open to the public.)

Hostos Community College is one of the schools constituting the City University of New York (CUNY). Meetings of the school Senate are open to members of the Hostos community, while individuals from outside the school require special permission to attend. The Court held that this policy does not violate FOIL or OML because, while the Senate's role is to make policy recommendations to CUNY's President and Board of Trustees, it has no authority to enact policy decisions on its own. Lacking such authority, the Court concluded, neither the Senate nor its Executive Committee is a public body within the meaning of FOIL or OML.

In reaching its decision, the Appellate Division looked for guidance to *Smith v. CUNY*, in which the Court of Appeals held that the LaGuardia Community College Association was a public body subject to OML. The Appellate Division noted that, unlike the body under consideration in *Smith*, the Hostos Senate has no decision-making authority to allocate public funds, nor does it exercise any other non-reviewable power to enact policy.

Mordecai Newman, the Assistant Corporation Counsel who handled *Perez* on appeal, said: "The Court's decision was based on a cogent analysis of the scope of FOIL and OML, and of the strictly limited advisory authority afforded to the Senate by the Hostos Community College Charter of Governance. We feel the Court made the correct decision."

Senior Counsel Larry A. Sonnenshein also worked on the appeal. The record on appeal was prepared by Appeals Division Paralegal April Wright. Assistant Corporation Counsel Jane R. Goldberg represented CUNY before the lower court. Steve Goulden, an Assistant Corporation Counsel in the Legal Counsel Division and the Law Department's FOIL and OML expert, also worked on the case.

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