

<b>JOSEPH V. LONGO</b>	:	<b>BEFORE THE SCHOOL</b>
	:	<b>ETHICS COMMISSION</b>
<b>v.</b>	:	
	:	
<b>ERIC SCHWARTZ,</b>	:	<b>Docket No. C01-10</b>
<b><i>BELLEVILLE BOARD OF EDUCATION:</i></b>	:	<b>DECISION</b>
<b><i>ESSEX COUNTY</i></b>	:	
	:	

**PROCEDURAL HISTORY**

This matter arises from a complaint filed on January 25, 2010 alleging that Eric Schwartz, a member of the Belleville Board of Education (Board) violated the School Ethics Act (Act), N.J.S.A. 18A:12-21 et seq. The complainant specifically alleges that the respondent violated N.J.S.A. 18A:12-24.1(g) of the Code of Ethics for School Board Members when he revealed confidential information pertaining to contract negotiations between the District and a candidate for the position of Superintendent to the Belleville Times newspaper.

Pursuant to a Motion to Dismiss in Lieu of Answer that was filed on behalf of the respondent, at its meeting on April 20, 2010, the Commission voted to deny the respondent’s Motion to Dismiss. The Commission also voted to retain this complaint for hearing at a later date. N.J.A.C. 6A:28-10.8(a). An answer was filed on behalf of the respondent on June 28, 2010.

By letter dated July 28, 2010, the parties were notified that a hearing on the merits of the complaint was scheduled for August 31, 2010. On August 10, 2010, the complainant informed the Commission, in writing, that he was not attending the hearing. By letter dated August 11, 2010, the Commission confirmed the hearing set for August 31, 2010 and reminded the parties that the complainant had the burden to factually establish a violation of the Code of Ethics for School Board Members. The parties were further notified that if the complainant did not attend the hearing on August 31, 2010, counsel for the respondent could move to dismiss the complaint. Finally, the complainant was therein advised that if he did not wish to prosecute the allegations in the complaint, he could withdraw the complaint by notifying the Commission and respondent’s counsel in writing, as permitted by N.J.A.C. 6A:28-10.6(a).

By letter dated August 30, 2010, counsel for the respondent notified the Commission that he had been in communication with the complainant who informed him that he would not be present for the hearing scheduled for August 31, 2010. Consequently, counsel requested that if the complainant failed to appear, respondent’s original Motion to Dismiss be reconsidered by the Commission and the matter be dismissed, with prejudice.

The parties did not attend the Commission's meeting on August 31, 2010. Therefore, the Commission considered the respondent's request to renew his Motion to Dismiss the complaint and granted the respondent's motion, for the reasons set forth below.<sup>1</sup>

## ANALYSIS

Pursuant to N.J.S.A. 18A:12-29(b) and N.J.A.C. 6A:28-6.4, it is the complainant's burden to factually establish a violation of the Code of Ethics for School Board Members in accordance with the standards set forth in the Commission's regulations. Thus, N.J.S.A. 18A:12-24.1(g) provides:

I will hold confidential all matters pertaining to the schools which, if disclosed, would needlessly injure individuals or the schools. In all other matters, I will provide accurate information and, in concert with my fellow board members, interpret to the staff the aspirations of the community for its school.

The Commission's regulations require that:

Factual evidence of a violation of the confidentiality provision of N.J.S.A. 18A:12-24.1(g) shall include evidence that the respondent(s) took action to make public, reveal or disclose information that was not public under any laws, regulations or court orders of this State, or information that was otherwise confidential in accordance with board policies, procedures or practices. Factual evidence that the respondent violated the inaccurate information provision of N.J.S.A. 18A:12-24.1(g) shall include evidence that substantiates the inaccuracy of the information provided by the respondent(s) and evidence that establishes that the inaccuracy was other than reasonable mistake or personal opinion or was not attributable to developing circumstances. N.J.A.C. 6A:28-6.4(a)7.

The Commission recognizes that when conducting hearings on complaints that solely allege a violation of the Code of Ethics for School Board Members, such hearings shall be conducted in accordance with the rules of the Office of Administrative Law. N.J.A.C. 6A:28-10.8(c). Thus, the only evidence which the Commission may consider in this matter is that which is accepted by it and included in the record. N.J.A.C. 1:1-15.1(a). Although the complainant included with his complaint a copy of the newspaper article wherein he claims a violation is demonstrated, he failed to appear to properly introduce the article as evidence before the Commission. Moreover, even assuming the complainant appeared and the newspaper article was received as evidence before the Commission, the same would be considered hearsay evidence. Hearsay evidence, while admissible, is subject to the "residuum rule," which requires

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<sup>1</sup> The Commission does not include a Summary of the Record or Factual Findings in this decision since there was no evidence introduced and accepted at the scheduled hearing.

that findings be supported by a residuum of competent evidence. Matter of Tenure Hearing of Cowan, 224 N.J.Super. 737 (App. Div. 1988).

The Commission further acknowledges that, where a party fails to appear for a hearing at the OAL, such rules provide the Administrative Law Judge with the discretion to return the case to the transmitting agency for appropriate disposition, with notice to the parties, which may result in a summary dismissal of the case. N.J.A.C. 1:1-14.4(a). Here, the complainant was duly notified of his burden of proof and also advised that his failure to appear to prosecute his complaint may result in the respondent moving to dismiss this matter, thereby precluding the Commission's review on the merits. He was also advised that, if he did not wish to prosecute the allegations in this complaint, he could withdraw the complaint by notifying the Commission and respondent's counsel in writing, pursuant to N.J.A.C. 6A:28-10.6(a). Notwithstanding these clear directives, the complainant did not withdraw his complaint and failed to appear for the very proceeding which he initiated and which the Commission specifically reserved for consideration of his allegation(s), without a stated reason or basis. Because the complainant failed to appear to prosecute the allegations in his complaint by means of legally competent evidence, he did not meet his burden pursuant to N.J.A.C. 6A:28-6.4 and the Commission, therefore, grants the respondent's Motion to Dismiss.

## **DECISION**

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

Robert W. Bender  
Chairperson

Mailing Date: September 29, 2010

**Resolution Adopting Decision C01-10**

**Whereas**, at its meeting on August 31, 2010, the School Ethics Commission reviewed this matter and considered the respondent's renewed Motion to Dismiss the complaint; and

**Whereas**, the Commission determined that the because the complainant failed to appear for the August 31, 2010 hearing to prosecute his complaint, he did not meet his burden to prove that the respondent violated N.J.S.A. 18A:12-24.1(g); and

**Whereas**, the Commission granted the respondent's motion and dismissed the complaint, with prejudice; 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 September 28, 2010.

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Joanne Boyle  
Executive Director