



## 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. Where a party fails to appear for a hearing at the OAL, regulations provide the ALJ 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, by notice dated October 14, 2015, the ALJ returned the case to the Commission, noting the Complainant's nonappearance for a scheduled telephone prehearing conference on October 5, 2015 and directing that if the Complainant still wanted a hearing, she must provide an explanation to the Commission for her nonappearance, in writing, within 13 days of the notice, with copies of any such explanation to all other parties. In her response to the Commission on October 26, 2015, the Complainant explained that she never received the notification of the telephone prehearing conference and that the last communication she received from the OAL was the Notice of Filing dated July 27, 2015.

In consideration of this explanation, the Commission reviewed the record and established that Complainant's current address was listed on all notices sent to her by this Commission and the OAL, including the Notice of Telephone Prehearing Conference and Notice of Failure to Appear, the latter of which the Complainant attached to her explanation. Moreover, there was no evidence of returned mail in the file in support of Complainant's non receipt of the notice. Finally, the Commission recognizes that the Complainant did not state that she made any attempt to contact the OAL from receipt of the Notice of Filing to inquire as to the status of her case or if the matter had been scheduled. Consequently, the Commission dismisses this Complaint in its entirety and will take no further action in this matter.

## DECISION

For the reasons set forth above, the Commission finds that the Complainant's unsupported explanation is insufficient to warrant the re-transmittal of this matter to the OAL for hearing. Accordingly, the Commission dismisses the within Complaint for failure to prosecute. 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).

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Robert W. Bender  
Chairperson

Mailing Date: November 25, 2015

## **Resolution Adopting Decision – C06-15**

**Whereas**, at its meeting on May 26, 2015, the Commission voted to transmit this matter to the Office of Administrative Law (OAL) for a hearing; and

**Whereas**, after transmittal to the OAL, the Complainant failed to appear for the scheduled telephone prehearing conference; and

**Whereas**, pursuant to N.J.A.C. 1:1-14.4(a), the OAL returned the matter to the Commission, directing that the Complainant provide an explanation for her failure to appear; and

**Whereas**, pursuant to N.J.A.C. 1:1-14.4(a), on October 26, 2015, the Complainant filed an explanation for her failure to appear; and

**Whereas**, at its meeting on October 26, 2015, the Commission reviewed the record and the explanation for the non-appearance; and

**Whereas**, at its meeting on November 24, 2015 the Commission voted to dismiss the matter in its entirety; 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 November 24, 2015.

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Joanne M. Restivo  
Acting Executive Director