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ROBERT T. TRAUTMANN

V. : ET

JULIA PRESLEY AND EVA NAGY
FRANKLIN TOWNSHIP
BOARD OF EDUCATION,
SOMERSET COUNTY:

BEFORE THE SCHOOL ETHICS COMMISSION

SEC Dkt No. C09-14 OAL Dkt No. EEC 09346-15N

**DECISION—FAILURE TO APPEAR** 

## PROCEDURAL HISTORY

This matter arises from a Complaint filed on March 24, 2014, by Robert T. Trautmann, a member of the Franklin Township Board of Education (Board), alleging that fellow Board members Julia Pressley and Eva Nagy violated the School Ethics Act (Act), N.J.S.A. 18A:12-21 et seq. By letters dated April 3, 2014 and June 5, 2014, the School Ethics Commission (Commission) acknowledged receipt of the Complaint and deemed it procedurally deficient. The Complainant filed an amended Complaint on June 16, 2014, resolving the procedural deficits, and specifically alleged that the Respondents violated N.J.S.A. 18A:12-24.1(a), (b) and (g) of the Code of Ethics for School Board Members. Counsel for the Respondents requested and received a brief extension to file a responsive pleading. On July 22, 2014, the Respondents filed a Motion to Dismiss in lieu of an Answer to Counts 1 and 2 of the Complaint. Count 3 was not addressed at that time.

The parties were notified by letter, dated July 31, 2014, that the Commission would consider this matter at its meeting on August 26, 2014, in accordance with N.J.A.C. 6A:28-10.8, in order to make a determination on Respondent's Motion to Dismiss. Therein, the parties were specifically advised that the Commission would take one of several actions: Decide to retain the Complaint for a hearing by the Commission at a later date after the filing of an Answer; decide to refer the matter to the Office of Administrative Law for a hearing; table the matter to request additional information or legal advice; or dismiss the Complaint where the allegations in the Complaint, on their face, were insufficient, even if true, to warrant review by the Commission as possible violations of the School Ethics Act.

At its meeting of August 26, 2014, the Commission voted to dismiss Counts 1 and 2 of the Complaint without prejudice for failure to properly plead the allegations cited therein and alleged to be in violation of the Act. N.J.A.C. 6A:28-10.8(a)(5). The Complainant was granted leave to file a new Complaint within 20 days from the date of the decision as the time tolled for that period. In the event that the Complainant did not file an Amended Complaint, the Respondent was directed to file an Answer to Count 3 only within 20 days of the expiration of the original 20-day period. As the Complainant did not file an Amended Complaint, Respondent Presley filed her Answer to Count 3<sup>1</sup> on November 10, 2014, which included an allegation that the Complaint was frivolous.

The parties were notified by letter, dated March 4, 2015, that the Commission would consider the allegations in Count 3 and the Answer with its allegation that the Complaint was frivolous at its

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<sup>&</sup>lt;sup>1</sup> Respondent Eve Nagy was not named in this Count.

meeting on March 24, 2015, pursuant to N.J.A.C. 6A:28-10.8. At its meeting on March 24, 2015, the Commission voted to find that the above-captioned Complaint was not frivolous, in accordance with the standard set forth at N.J.A.C. 6A:28-1.2; and voted to transmit this Complaint to the Office of Administrative Law (OAL) for a plenary hearing on Count 3 of the Complaint. The Complainant carries the burden to prove factually any violations of N.J.S.A. 18A:12-24.1(f), under the Code of Ethics for School Board Members within the standards set forth at N.J.A.C. 6A:28-6.4. The matter was transmitted to the OAL on June 12, 2015.

Thereafter, this matter was scheduled for hearing before an Administrative Law Judge (ALJ) on March 21, 2016; however, the Complainant failed to appear for the hearing. By notice of March 23, 2016, the OAL advised the Complainant of his nonappearance and granted him 13 days to submit to the Commission an explanation for his failure to appear, due on April 5, 2016. Since the Complainant did not submit an explanation, the OAL returned to the Commission the case for disposition on April 6, 2016. At its meeting on April 26, 2016, the Commission determined to take no further action on the Complaint and voted to dismiss it in its entirety.

## **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 March 23, 2016, the ALJ returned the case to the Commission, noting the Complainant's nonappearance for a scheduled plenary hearing on March 21, 2016 and directing that if the Complainant still wanted a hearing, he must provide an explanation to the Commission for his nonappearance, in writing, within 13 days of the notice, with copies of any such explanation to all other parties. The Complainant did not respond to the ALJ's notice.

## **DECISION**

Having failed to submit an explanation for his nonappearance and noting the burden of proof in this matter, 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).

Robert W. Bender	
Chairperson	

Mailing Date: April 27, 2016

## **Resolution Adopting Decision – C09-14**

**Whereas,** at its meeting on March 24, 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 hearing; and

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

Whereas, the Complainant failed to provide an explanation for his non-appearance; and

Whereas, at its meeting on April 26, 2016, the Commission voted to dismiss the Complaint; 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

Robert W. Bender, Chairperson	

I hereby certify that the Resolution was duly adopted by the School Ethics Commission at its public meeting on April 26, 2016.

Joanne M. Restivo

Acting Executive Director