

Because of State closings due to inclement weather, the matter came before the Commission on March 6, 2014 at which time the complainant's complaint was reviewed in its entirety.

The Commission took this opportunity to review not just the allegations of N.J.S.A. 18A:12-24(c) and (f), but also of N.J.S.A. 18A:12-24(b) so that the entire controversy could be examined together. Once again, the Commission found no probable cause to credit the allegations that the respondent violated N.J.S.A. 18A:12-24(b), (c) or (f), as set forth in this complaint.

Accordingly, the Commission dismissed these allegations of alleged prohibited acts and voted to retain this matter for a hearing where the complainant shall carry the burden to prove factually that the respondent violated N.J.S.A. 18A:12-24.1(e), (g) and (j) of the Code of Ethics for School Board Members, as alleged in the remaining Counts in the complaint.

By letter dated March 21, 2014, the parties were notified that the Code hearing was scheduled for April 22, 2014. Enclosed with the letter was the Verification of Attendance, returnable on April 9, 2014, on which the parties were to list their witnesses. On April 7, 2014, the Commission sent a courtesy email reminder that the due date was quickly approaching. The respondent timely filed his Verification of Attendance on the due date and listed himself as the only witness. Due to transmission problems, the complainant filed hers on April 14, 2014, advising that she would appear alone.

On April 17, 2014, the complainant sent an email formally requesting an adjournment of the proceedings to seek counsel. On Monday, April 21, 2014, the first business day after the Easter weekend, the respondent advised the complainant and the Commission that he would not consent to an adjournment as the matter was almost one year old, and the complainant could have retained counsel at any point before the eve of hearing. That same day, the complainant was notified that her request for an adjournment was denied and that she must be present on Tuesday, April 22, 2014 to present her case.

The respondent appeared with counsel, Donald Okner, Esq. The complainant did not appear. After waiting a short time for the complainant to arrive, the respondent moved to dismiss the remaining allegations, asserting that the complainant did not meet her burden of proof. After hearing arguments from counsel, the Commission asked counsel and the respondent to leave the room so that it could deliberate. Pursuant to N.J.A.C. 1:1-14.4, the rule governing a failure to appear for a scheduled hearing, allows the complainant an opportunity to submit an explanation for the nonappearance. The Commission advised the respondent that the complainant would be granted this opportunity and that the Commission would make a determination on the motion at a later date. By letter dated April 25, 2014, the complainant was invited to submit an explanation, which she did on May 5, 2014.

At its meetings on June 24, 2014, the Commission granted the respondent's motion to dismiss with prejudice.

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 before any agency, regulations provide the agency head, here the Commission, with the discretion after proper notice to the parties, to issue a summary dismissal of the case. N.J.A.C. 1:1-14.4(a).

The complainant was given proper notice that a hearing on her complaint was scheduled for April 22, 2014. In the course preparing for the hearing, the complainant advised the Commission, as stated on her Verification of Attendance, that she would appear on that date. When she did not appear, by letter dated April 25, 2014, the Commission offered the complainant an opportunity to provide an explanation to the Commission for her non-appearance, in writing. In its review, the Commission determined that the complainant's explanation simply restated the purpose for the original request for an adjournment and nothing more. In light of its inadequacy, the Commission granted the respondent's motion to dismiss with prejudice. Accordingly, the Commission will take no further action on this complaint.

DECISION

Having noted that the complainant bore the burden of proof in this matter and that she failed to appear at the hearing without good cause, the Commission hereby grants the respondent's Motion to Dismiss the allegation that respondent violated N.J.S.A. 18A:12-24.1(e), (g) and (j) of the Code of Ethics for School Board Members for complainant's 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: June 25, 2014

Resolution Adopting Decision C21-13

Whereas, by letter of March 21, 2014, the parties in this matter were given due and ample notice of the hearing scheduled for April 22, 2014;

Whereas, on April 14, 2014, complainant submitted her Verification of Attendance, advising the Commission and her adversary that she would appear on the scheduled date;

Whereas, the complainant failed to appear for the scheduled hearing and failed to prosecute the complaint; and

Whereas, pursuant to N.J.A.C. 1:1-14.4(a), the Commission directed the complainant provide an explanation for her failure to appear; and

Whereas, the complainant submitted an insufficient explanation for her nonappearance;

Whereas, at its meeting on June 24, 2014, the Commission voted to dismiss 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.

Robert W. Bender, Chairperson

I hereby certify that the Resolution was duly adopted by the School Ethics Commission at its public meeting on June 24, 2014.

Joanne M. Restivo
Interim Executive Director