LYDIA R. SILVA

BEFORE THE SCHOOL ETHICS COMMISSION

Agency Docket No. C09-11

EEC 4998-2011S

DECISION

JONATHAN SILVER,

LAKEWOOD BOARD OF EDUCATION:

OCEAN COUNTY

PROCEDURAL HISTORY

v.

This matter arises from a complaint filed on March 2, 2011 by Lydia R. Silva, alleging that Jonathan Silver, a member of the Lakewood Board of Education ("Board") violated the School Ethics Act ("Act"), N.J.S.A. 18A:12-21 et seg. By notice dated March 3, 2011, the complainant was informed that the complaint was deficient and, therefore, not accepted. On March 8, 2011, the complainant submitted an amended complaint, which was accepted by the Commission. Therein, the complainant alleges that the respondent violated N.J.S.A. 18A:12-24.1(a), (b), (c), (d), (e), (i) and (j) of the Code of Ethics for School Board Members.

An answer was filed by the respondent on March 30, 2011. April 26, 2011, 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 to transmit this complaint to the Office of Administrative Law (OAL) for a hearing. N.J.A.C. 6A:28-10.8(a). Thereafter, this matter was scheduled for hearing on December 21, 2011. However, when the parties failed to appear for the hearing, the case was returned to the Commission for disposition. Although provided an opportunity to explain their nonappearance, the parties failed to do so. Therefore, at its meeting on January 24, 2012, the Commission voted to dismiss the complaint.

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 administrative law judge (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 December 29, 2011, the ALJ returned the case to the Commission, noting the parties failed to appear for a scheduled hearing on December 21, 2011 and directing that if they still wanted a hearing, they must provide an explanation to the Commission for their nonappearance, in writing, within 13 days of the notice. The parties did not respond to the ALJ's notice.

DECISION

Having failed to submit an explanation for her 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. <u>See</u>, <u>New Jersey Court Rule 2:2-3(a)</u>.

Robert W. Bender Chairperson

Mailing Date: January 25, 2012

Resolution Adopting Decision C09-11

Whereas, at its meeting on April 26, 2011, the Commission voted to transmit this complaint to the Office of Administrative Law (OAL) for a hearing; and

Whereas, after transmittal to the OAL, the parties 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 parties provide an explanation for their failure to appear; and

Whereas, the parties did not submit an explanation for their failure to appear; and

Whereas, at its meeting on January 24, 2012, the Commission voted to dismiss the complaint and to approve 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 January 24, 2012.	

Joanne Boyle
Executive Director