

***Before the School Ethics Commission
OAL Docket No.: EEC-01630-22
SEC Docket No.: C02-22
Final Decision (Failure to Appear)***

**David Callaway,
Complainant**

v.

**Elyse Sanchez,
Pleasantville Board of Education, Atlantic County,
Respondent**

I. Procedural History

The above-captioned matter arises from a Complaint that was filed with the School Ethics Commission (Commission)¹ on January 3, 2022, by David Callaway (Complainant), alleging that Elyse Sanchez (Respondent), a member of the Pleasantville Board of Education (Board), violated the School Ethics Act (Act), *N.J.S.A.* 18A:12-21 *et seq.* More specifically, the Complaint averred that Respondent violated *N.J.S.A.* 18A:12-24.1(a) (in Count 1); *N.J.S.A.* 18A:12-24.1(c) (in Counts 3-9); *N.J.S.A.* 18A:12-24.1(e) (in Counts 1-9); *N.J.S.A.* 18A:12-24.1(f) (in Counts 3-9); *N.J.S.A.* 18A:12-24.1(g) (in Count 4); and *N.J.S.A.* 18A:12-24.1(i) (in Count 4) of the Code of Ethics for School Board Members (Code).

On January 6, 2022, the Complaint was served on Respondent, via electronic mail, notifying her that ethics charges had been filed against her with the Commission, and advising that she had twenty (20) days to file a responsive pleading.² On February 4, 2022, Respondent filed an Answer to Complaint (Answer).

The parties were notified by correspondence dated February 17, 2022, that the above-captioned matter would be discussed by the Commission at a special meeting on February 25, 2022. Following the special meeting on February 25, 2022, the Commission advised the parties that it voted to transmit the above-captioned matter to the Office of Administrative Law (OAL) for a plenary hearing. The Commission further advised that, at the OAL, Complainant would

¹ The Complaint in this matter was initially filed (electronically) with the New Jersey State Ethics Commission, and was then forwarded to the School Ethics Commission (electronically) based on the subject matter.

² In order to conduct business during the Coronavirus (COVID-19) pandemic, the Commission implemented an electronic filing system, which remains a permissible method by which the Commission and parties can effectuate service of process. Consequently, service of process was effectuated by the Commission through electronic transmission only.

have the burden to prove the alleged violations of *N.J.S.A.* 18A:12-24.1(a) (in Count 1); *N.J.S.A.* 18A:12-24.1(c) (in Counts 3-9); *N.J.S.A.* 18A:12-24.1(e) (in Counts 1-9); *N.J.S.A.* 18A:12-24.1(f) (in Counts 3-9); *N.J.S.A.* 18A:12-24.1(g) (in Count 4); and *N.J.S.A.* 18A:12-24.1(i) (in Count 4) pursuant to the standards set forth in *N.J.A.C.* 6A:28-6.4.

At the OAL, the matter was assigned to the Honorable Elaine B. Frick, Administrative Law Judge (ALJ Frick). After the matter was transmitted to the OAL, and despite multiple attempts to secure Complainant's attendance and participation in the litigation related to the above-captioned matter, Complainant failed to appear as directed by ALJ Frick. As a result, and on September 8, 2022, ALJ Frick issued an *Initial Decision (Failure to Appear)* dismissing the proceedings at the OAL, and returning the above-captioned matter to the Commission for disposition.

The Commission acknowledged receipt of ALJ Frick's *Initial Decision (Failure to Appear)* on September 8, 2022; therefore, the forty-five (45) day statutory period for the Commission to issue a Final Decision was October 24, 2022.³ Prior to that date, the Commission requested a forty-five (45) day extension of time to issue its decision so as to allow the Commission, which only meets monthly, the opportunity to review the full record. Pursuant to *N.J.S.A.* 52:14B-10(c) and *N.J.A.C.* 1:1-18.8, and for good cause shown, the Commission was granted an extension until December 8, 2022.

III. Analysis

Pursuant to *N.J.S.A.* 18A:12-29(b) and *N.J.A.C.* 6A:28-6.4, the Complainant has the burden to factually establish a violation of the Code 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 assigned to adjudicate a matter with the discretion to return it to the transmitting agency for appropriate disposition, with notice to the parties, which may result in a summary dismissal of the matter. *N.J.A.C.* 1:1-14.4(a).

In the above-captioned matter, and by *Initial Decision (Failure to Appear)* dated September 8, 2022, ALJ Frick returned the case to the Commission, and found the following:

1. A prehearing telephonic conference was initially scheduled for May 16, 2022. Notice was issued to the parties via the email addresses on file with the OAL.
2. Respondent's counsel was dialed in for the May 16, 2022, telephonic conference. Complainant failed to dial in. After waiting fifteen minutes, Complainant was marked as a failure to appear (FTA).

³ Forty-five (45) days after September 8, 2022, was technically, Sunday, October 23, 2022; by rule, the deadline is therefore extended until the next business day, which is Monday, October 24, 2022.

3. The initial prehearing telephonic conference was rescheduled for June 21, 2022. Notice was issued to the parties via the email addresses on file with the OAL.

4. The notice of the June 21, 2022, telephonic conference noted at the bottom: "If you do not participate in the prehearing conference, the file will be returned to the transmitting agency for appropriate action which may include imposition of the proposed penalty or granting the relief requested by the other party."

5. On June 21, 2022, Respondent's counsel was dialed in for the call. Complainant did not dial in for the conference. After waiting fifteen minutes, Complainant was marked as FTA.

6. While waiting for Complainant to dial in for the June 21, 2022, telephonic conference, counsel for Respondent indicated that he had sent an email to Complainant the day prior, reminding him of the rescheduled call date. He received a reply email indicating it was not Complainant's email address and was asked to cease sending any more correspondence. Counsel for Respondent used the email address which was provided as Complainant's email at the time the Complaint was submitted to the Commission.

7. The prehearing call was rescheduled for the third time for July 26, 2022. The notice issued to Complainant from the OAL was sent via regular mail. It included the same notice at the bottom, in larger font and in bold, that if a party did not participate in the telephone conference, the file would be returned to the transmitting agency for appropriate action.

8. On July 26, 2022, Complainant did appear for the telephonic conference. He indicated that the email address on file was the email address of the person who filed the complaint with the State Ethics Commission. Complainant provided his personal email address during the call.

9. During the conference on July 26, 2022, another call was scheduled for August 29, 2022, at 2:30 p.m. Both parties indicated they were available on that date and time for the call.

10. Notice of the call of August 29, 2022, was issued to the parties from the OAL. Complainant's notice was sent by email to the address he provided during the call on July 26, 2022, and by ordinary mail, when the August call was scheduled and confirmed with the parties.

11. The notice issued for the August call had the same notation at the bottom as on the previous notices, indicating that “If you do not participate in the telephone conference, the file will be returned to the transmitting agency for appropriate action which may include imposition of the proposed penalty or granting the relief requested by the other party.”

12. On August 29, 2022, at 2:30 p.m., counsel for Respondent was dialed in for the conference call. Complainant failed to dial in. After waiting for fifteen minutes, the call was terminated, and Complainant was noted to be FTA.

13. While waiting for Complainant to appear on August 29, 2022, counsel for Respondent indicated that he had re-sent discovery requests to Complainant after the call on July 26, 2022. He did not hear from Complainant after that call. He did not receive answers to the discovery requests.

14. As of September 8, 2022, Complainant has not communicated with the OAL regarding his FTA of August 29, 2022.

Initial Decision (Failure to Appear) at 2-4.

Based on the foregoing, ALJ Frick **concluded** that Complainant had notice of the scheduled proceeding of August 29, 2022, and had confirmed his availability on that date at the time scheduled for the call; **concluded** that Complainant’s failure to appear demonstrates his abandonment of the matter, and the file shall be returned to the transmitting agency for disposition; and **concluded** the OAL proceeding shall be dismissed. *Id.* at 5.

Following receipt of ALJ Frick’s *Initial Decision (Failure to Appear)*, the Commission sent correspondence to Complainant on or about October 14, 2022; October 21, 2022; October 28, 2022; November 4, 2022; and November 10, 2022. The correspondence asked Complainant to provide a written explanation as to why he did not attend the telephone conferences scheduled by ALJ Frick, and to advise whether he intended to prosecute the allegations set forth in his Complaint. The Commission sent this correspondence to Complainant via certified and regular mail (to the mailing address detailed in his Complaint), and via electronic mail (to both the e-mail address from which the Complaint emanated, and the e-mail address that Complainant provided to ALJ Frick and Respondent’s counsel on July 26, 2022). Importantly, none of the correspondence sent to Complainant was returned as undeliverable. As of November 22, 2022, Complainant has not responded to the Commission’s correspondence, has not provided an explanation for his failure to appear, and has not expressed an interest in continuing to pursue or otherwise litigate the claims in his Complaint.

Despite ALJ Frick’s efforts, and those of the Commission to secure Complainant’s involvement in the prosecution of his claims, Complainant has failed to respond or to otherwise offer a reasonable basis for his failure to appear; consequently, he has abandoned this matter.

Therefore, the Commission dismisses the above-captioned matter, and will not take any further action.

IV. Decision

For the reasons more fully discussed herein, the Commission finds that Complainant has failed to prosecute his claims, and failed to offer a reasonable basis for his failure to appear at the proceedings before the OAL. 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.

Robert W. Bender, Chairperson

Mailing Date: November 22, 2022

**Resolution Adopting Final Decision (Failure to Appear)
in Connection with C02-22**

Whereas, at a special meeting on February 25, 2022, the School Ethics Commission (Commission) voted to transmit the above-captioned matter to the Office of Administrative Law (OAL) for a plenary hearing; and

Whereas, despite multiple attempts to secure Complainant's attendance and participation in the litigation related to the above-captioned matter, Complainant failed to appear at scheduled telephone hearings as directed by the Honorable Elaine B. Frick, Administrative Law Judge (ALJ Frick); and

Whereas, ALJ Frick issued an *Initial Decision (Failure to Appear)* on September 8, 2022, dismissing the proceedings at the OAL, and returning the above-captioned matter to the Commission for disposition; and

Whereas, following receipt of ALJ Frick's *Initial Decision (Failure to Appear)*, the Commission sent correspondence to Complainant dated October 14, 2022; October 21, 2022; October 28, 2022; November 4, 2022; and November 10, 2022, and asked Complainant to provide a written explanation as to why he did not attend the telephone conferences scheduled by ALJ Frick, and to advise whether he intended to prosecute the allegations set forth in his Complaint; and

Whereas, as of November 22, 2022, Complainant has not responded to the Commission's correspondence, has not provided an explanation for his failure to appear, and has not expressed an interest in continuing to pursue or otherwise litigate the claims in his Complaint; and

Whereas, at its meeting on November 22, 2022, the Commission voted to dismiss the above-captioned matter for Complainant's failure to prosecute his claims, and to approve the within decision as accurately memorializing its actions/findings; and

Now Therefore Be It Resolved, the Commission hereby adopts the within decision as its Final Decision (Failure to Appear), and directs its staff to notify all parties to this action of its decision herein.

Robert W. Bender, Chairperson

I hereby certify that this Resolution was duly adopted by the School Ethics Commission at its meeting on November 22, 2022.

Kathryn A. Whalen, Esquire
Director, School Ethics Commission