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**ARUN RIMAL**

**v.**

**SANDRA DONNAY**  
***MONTGOMERY TOWNSHIP***  
***BOARD OF EDUCATION,***  
***SOMERSET COUNTY***

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**BEFORE THE SCHOOL  
ETHICS COMMISSION**

**SEC Docket No.: C04-14**  
**OAL Docket No.: EEC 9903-14**

**DECISION**  
**FINAL DECISION**

### **PROCEDURAL HISTORY**

This matter arises from a complaint filed on January 24, 2014, by Board President Arun Rimal alleging that Sandra Donnay, a member of the Montgomery Township Board of Education, violated the School Ethics Act (Act), N.J.S.A. 18A:12-21 et seq. Specifically, complainant asserted that the respondent violated N.J.S.A. 18A:12-24.1(g) of the Code of Ethics for School Board Members (Code). By letter dated February 7, 2014, the complaint was sent to the respondent, notifying her that charges against her were filed with the School Ethics Commission (Commission) and advising her that she had 20 days to answer the complaint. The respondent retained counsel, who requested and received a brief extension to file a response. Respondent filed a Motion to Dismiss in lieu of an Answer on March 14, 2014, alleging that the complaint was frivolous. Complainant filed a reply to the Motion to Dismiss and to the allegation on April 16, 2014.

By letter dated April 2, 2014, the Commission notified the complainant and respondent that this matter was scheduled for discussion by the Commission at its meeting on April 22, 2014 in order to make a determination regarding the respondent's Motion to Dismiss and allegation of frivolousness. The Commission voted to deny the Motion to Dismiss, to find the complaint not frivolous, and to transmit to the Office of Administrative Law (OAL) for hearing. After the meeting, the Commission learned of the Complainant's response to the allegation of frivolous complaint and the respondent's reply thereto, filed on April 21, 2014. The Commission decided in the interest of fairness that it would review the matter again at its meeting on May 27, 2014 and so advised the parties. At its meeting on May 27, 2014, the Commission voted to reaffirm the April 22, 2014 vote to deny the respondent's Motion to Dismiss alleging that the respondent violated N.J.S.A. 18A:12-24.1(g) of the Code, to find the complaint not frivolous, in accordance with the standard set forth in N.J.A.C. 6A:28-1.2, and, pursuant to N.J.A.C. 6A:28-10.8(a), to transmit this matter to the (OAL) for a plenary hearing after the respondent filed her Answer.

After transmittal of this matter to the OAL, on August 24, 2014, the complainant advised the School Ethics Commission that he wished to withdraw his complaint since he was satisfied that the Commission had determined that the matter was "properly raised." The Commission notified the Office of Administrative Law of complainant's request, and on September 3, 2014, the respondent filed a Motion Seeking Dismissal with Prejudice with Administrative Law Judge Jeff S. Masin (ALJ), asserting that the complainant had caused her to suffer harassment and monetary loss from complainant's baseless claims against her.

The Administrative Law Judge (ALJ) concluded that a “Withdrawal with Prejudice” was appropriate and issued his Initial Decision on October 16, 2014. The matter was returned to the Commission for review on the same day. 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 of time in which to issue its final decision in this matter.

The ALJ’s Initial Decision was reviewed by the Commission at its meeting on October 28, 2014. The Commission determined to accept the Initial Decision, approving the withdrawal of the complaint with prejudice, and dismissed the matter.

## **ANALYSIS**

Upon careful and independent review of the ALJ’s reasoning and legal conclusion, the Commission finds that it is appropriate to dismiss this matter with prejudice. The Commission concurs that the complainant should be forever foreclosed from bringing these claims against this respondent at some other time. The Commission also shares the same concern that the respondent’s integrity has been called into question without the opportunity to defend herself against these allegations.<sup>1</sup>

The gravamen of N.J.A.C. 6:28-6.6(g) is the Commission’s safeguard against this unfairness, which provides:

The Commission shall hold all information confidential regarding any pending matter until it first takes action at a public meeting to determine probable cause, or violation, or until the matter is settled, withdrawn or dismissed, provided that:

1. Information which indicates the possible violation of any criminal law shall be provided to the Attorney General in compliance with N.J.S.A. 18A:12-28(d);
2. Information about complaints may be shared as necessary for the Commission to meet its statutory obligation to place matters in abeyance pursuant to N.J.S.A. 18A:12-32 and N.J.A.C. 6A:28-1.5;
3. The full caption of a complaint may be included in a subpoena issued pursuant to N.J.A.C. 6A:28-9.1;
4. Information about complaints may be shared as necessary where complaints are consolidated pursuant to (b) and (c) above; and
5. Information regarding the status of a pending complaint may be provided to the executive county superintendents.

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<sup>1</sup> The respondent consents to a withdrawal with prejudice.

Except in these very limited circumstances, the Commission and its staff may not divulge the existence of a complaint before it, or the identity of the litigants until the tribunal has made a determination at a public meeting. In doing so, the Commission shields the parties not only from any potential reprisal levied against the complainant, but also from the taint endured by the respondent that often accompanies allegations of ethical violations.

The Commission also wishes to disabuse the complainant that any of his allegations were adjudicated against the respondent in its decision to deny respondent's Motion to Dismiss. Complainant's letter of withdrawal from his counsel states, "given the decision dated 24 June 2014 by Robert W. Bender, Chairperson that this matter was properly raised, he believes that nothing further would be gained by pursuing an ethics charge against Ms. Donnay." Mr. Rimmel incorrectly concludes that the Commission adjudicated the merits of the complaint; it made no findings of fact or conclusions of law establishing a violation of the Code.

In determining whether to grant a Motion to Dismiss, the Commission shall review the facts in the light most favorable to the complainant and determine whether the allegation(s) set forth in the complaint, if true, could establish a violation of the Act. N.J.A.C. 6A:28-8.3. Thus, the Commission was compelled to deny the Motion because it must view the facts, **which if true** (emphasis added), would be sufficient to support a finding that the respondent violated the Code of Ethics for School Board Members. The burden to prove his allegations is fully the responsibility of the complainant. The complainant has the burden to factually establish through a preponderance of the credible evidence that the respondent violated the Code, something which he elected not to honor. Instead the complainant filed a request to withdraw his complaint.

Finally, the Commission cautions that in the future, alleging ethical violations without permitting a respondent to defend against them may be tantamount to an abuse of process and considered indicia of a frivolous complaint if the allegations are determined by the School Ethics Commission to be either: 1) Commenced, used or continued in bad faith, solely for the purpose of harassment, delay or malicious injury; or 2) One which the complainant knew, or should have known, was without any reasonable basis in law or equity and could not be supported by a good faith argument for an extension, modification or reversal of existing law.

Such a finding would expose the complainant to a monetary penalty, pursuant to N.J.S.A. 18A:12-29(e).

## **DECISION**

Upon review and for the reasons set forth above, the Commission adopts the ALJ's Initial Decision accepting the withdrawal of the complaint with prejudice and adopts the Initial Decision as the final decision in this matter. The matter is hereby dismissed with prejudice.

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Robert W. Bender, Chairperson

Mailing Date: November 26, 2014

**Resolution Adopting Decision – C04-14**

**Whereas**, pursuant to N.J.A.C. 6A:28-10.8(a), the Commission voted to transmit this matter to the Office of Administrative Law (OAL) for hearing; and

**Whereas**, while at the OAL, the parties to this matter agreed to the withdrawal of the complaint with prejudice; and

**Whereas**, the Administrative Law Judge concluded that a withdrawal without prejudice is insufficient protection for the respondent; and

**Whereas**, the Administrative Law Judge deemed the complaint withdrawn with prejudice; and

**Whereas**, at its meeting on October 28, 2014, the Commission determined to accept the withdrawal of the complaint with prejudice; and

**Whereas**, at its meeting on November 25, 2014, the Commission finds that the within decision accurately memorializes its adoption of the Initial Decision accepting the withdrawal with prejudice;

**Now Therefore Be It Resolved**, that the Commission hereby adopts the within decision and directs it staff to notify all parties to this action of the decision.

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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 25, 2014.

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Joanne M. Restivo  
Acting Executive Director