

SEC #C03/C04/C06/C07/C12-03  
C # 625-03SEC  
SB # 49-03

IN THE MATTER OF THE REMOVAL :  
OF PAUL SCHAEDEER FROM THE : STATE BOARD OF EDUCATION  
BOARD OF TRUSTEES OF THE : DECISION  
GOLDEN DOOR CHARTER SCHOOL, :  
JERSEY CITY, HUDSON COUNTY. :

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Decided by the School Ethics Commission, September 23, 2003

Decided by the Deputy Commissioner of Education, November 10, 2003

Decision on motion by the Commissioner of Education, December 11,  
2003

Decision on motion by the State Board of Education, March 3, 2004

For the Appellant, Lum, Danzis, Drasco & Positan, L.L.C. (Richard A.  
West, Jr., Esq., of Counsel)

For the Participant School Ethics Commission, Kimberley Lake Franklin,  
Deputy Attorney General (Peter C. Harvey, Attorney General of  
New Jersey)

On September 23, 2003, the School Ethics Commission (hereinafter  
"Commission") determined that Paul Schaeeder (hereinafter "appellant"), chairperson of  
the Board of Trustees of the Golden Door Charter School in Jersey City, had violated  
N.J.S.A. 18A:12-24.1(c) and (d) of the Code of Ethics for School Board Members, which

is part of the School Ethics Act (“Act”),<sup>1</sup> N.J.S.A. 18A:12-21 et seq., in connection with the termination of the school’s chief academic officer, Karen Jones. The Commission found that the appellant, in making the decision to terminate Jones’ employment, excluded one of the members of the three-member Board of Trustees from the decision-making process and, as a result, that the termination of Jones’ employment was initiated and completed by the appellant, who sought approval of the full Board after the fact. The Commission also concluded that the appellant had violated N.J.S.A. 18A:12-24(b) of the Act<sup>2</sup> in connection with the hiring of a former member of the Board of Trustees, Barry Fields, as an information technology consultant. The Commission found that the manner of Fields’ hiring violated the Act and that the appellant was responsible since he was the chairman of the Board at the time of such action.<sup>3</sup>

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<sup>1</sup> N.J.S.A. 18A:12-24.1 provides, in pertinent part:

A school board member shall abide by the following Code of Ethics for School Board Members:

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c. I will confine my board action to policy making, planning, and appraisal, and I will help to frame policies and plans only after the board has consulted those who will be affected by them.

d. I will carry out my responsibility, not to administer the schools, but, together with my fellow board members, to see that they are well run.

<sup>2</sup> N.J.S.A. 18A:12-24(b) provides:

b. No school official shall use or attempt to use his official position to secure unwarranted privileges, advantages or employment for himself, members of his immediate family or others.

<sup>3</sup> We note that the Commission, in its probable cause determination of June 24, 2003, observed that a petition was then pending before the Commissioner of Education alleging that Fields and the Board had violated N.J.S.A. 18A:12-1.1, which prohibits a board member from being appointed to a paid office or position by the board unless he had resigned or ceased to be a member of the board at least six months prior to such appointment. Recognizing that the issue before it was not the matter which was “actually pending” before the Commissioner, the Commission rejected the appellant’s contention that it should relinquish jurisdiction over the Fields allegation pursuant to N.J.S.A. 18A:12-32. In so doing, the

Observing that the appellant had “acted as a one-member board and in so doing [had] violated the Code of Ethics and the standards of conduct expected of board members in general,” the Commission found the appellant’s “conduct to be so egregious that only the penalty of removal would be appropriate.” School Ethics Commission’s Decision, slip op. at 8. It therefore recommended to the Commissioner of Education that the appellant be removed from his membership on the charter school’s Board of Trustees.<sup>4</sup>

On November 10, 2003, the Deputy Commissioner of Education, emphasizing that the Commissioner’s jurisdiction was limited to reviewing the sanction recommended by the School Ethics Commission, adopted the Commission’s recommended sanction and directed that the appellant be removed from his membership on the Board of Trustees.

The appellant filed the instant appeal to the State Board of Education. On December 11, 2003, the Commissioner denied the appellant’s motion for a stay of the Deputy Commissioner’s decision of November 10, and on March 3, 2004, the State Board granted the School Ethics Commission’s motion to participate in this matter.

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Commission stressed that the issue before it was whether the appellant had used his position to secure unwarranted privileges, advantages or employment for Fields under N.J.S.A. 18A:12-24(b) of the School Ethics Act, an allegation falling within its jurisdiction, and not whether the appellant had violated N.J.S.A. 18A:12-1.1 in connection with the hiring of Fields. Hence, the issue of whether the appellant violated N.J.S.A. 18A:12-1.1 in the hiring of Fields is not before us in this appeal.

<sup>4</sup> If the School Ethics Commission determines that a school official has violated the School Ethics Act, it shall recommend to the Commissioner of Education the reprimand, censure, suspension or removal of the official. N.J.S.A. 18A:12-29(c). The Commissioner is then responsible for acting on the recommendation and imposing a sanction. Id. Any appeal of the Ethics Commission’s determination regarding a violation of the Act and of the Commissioner’s decision regarding the sanction is to the State Board of Education. N.J.S.A. 18A:12-29(d).

After a thorough review of the record, we affirm, as modified herein, the School Ethics Commission's determination that the appellant violated the School Ethics Act in connection with the termination of Karen Jones' employment, but we reverse the Commission's determination that the appellant violated the Act in connection with the hiring of Barry Fields. In view of such determination, we conclude that the appropriate sanction is a reprimand.

Initially, for the reasons expressed by the Commission, we reject as without merit the appellant's contention that the Code of Ethics for School Board Members is not applicable to charter school trustees. As the Commission correctly found, the School Ethics Act applies in its entirety to members of a charter school's board of trustees.

In addition, we reject the appellant's contention that the School Ethics Commission improperly rendered a determination on the merits of this matter after conducting a probable cause hearing. Unlike the situation in In the Matter of the Removal of Ronald Udy, decided by the State Board of Education, April 7, 2004, cited by the appellant, the Commission in this instance issued a written decision on June 24, 2003, following a hearing held on May 1, in which it found that probable cause existed to credit the allegations involving the termination of Jones' employment and the employment of Fields. Then, finding that there were no material facts in dispute, the Commission, in accordance with N.J.A.C. 6A:28-1.14(b), provided the appellant with 30 days to file a written submission setting forth why the Commission should not find that his actions were in violation of the School Ethics Act. The appellant filed a timely submission, and, on September 23, 2003, the Commission issued its decision finding

that the appellant had violated N.J.S.A. 18A:12-24.1(c) and (d) and N.J.S.A. 18A:12-24(b) of the Act.<sup>5</sup>

Nonetheless, we do agree with the appellant that the Commission, in rendering its determination that the appellant had violated the Act, improperly relied on testimony given at the probable cause hearing by Board of Trustees member Annette Johnson, which was not subject to cross-examination.<sup>6</sup> “There are three main functions of cross-examination: (1) to shed light on the credibility of the direct testimony; (2) to bring out additional facts related to those elicited on direct, and (3) in states following the 'wide-open' rule, to bring out additional facts which tend to elucidate any issue in the case.” Lawlor v. Kolarsick, 92 N.J. Super. 309, 314 (App. Div. 1966), certif. denied, 48 N.J. 356 (1966), quoting McCormick, Evidence (1954), §29, pp. 54-55. While there is no dispute that the School Ethics Commission was not required to permit cross-examination during the hearing to determine whether probable cause existed to credit the complaints against the appellant, its reliance on Johnson’s testimony at that hearing – which the appellant did not have the opportunity to challenge through cross-examination – in rendering its subsequent determination on the merits of the complaints violated principles of fairness and risked undue prejudice to the appellant. See DaGraca v.

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<sup>5</sup> See notes 1 and 2 supra.

<sup>6</sup> Our regulations are clear that “[t]he parties may not question one another or each other’s witnesses” during a probable cause hearing before the School Ethics Commission. N.J.A.C. 6A:28-1.12(d). Rather, the parties are provided with the opportunity to make an opening statement, present witnesses and provide the Commission with documents. Id. The Commission make ask questions of the parties and witnesses and may, in its discretion, ask questions which are submitted to it by the parties. Id. See N.J.S.A. 18A:12-29(b) (upon receipt of a complaint, the Commission, in determining whether probable cause exists to credit the allegations therein “shall provide each named school official with the opportunity to submit a written statement under oath”).

Laing, 288 N.J. Super. 292, 303 (App. Div. 1996), certif. denied, 145 N.J. 372 (1996), citing State v. Medina, 254 N.J. Super. 668 (App. Div. 1992).

However, disregarding Johnson's testimony at the probable cause hearing does not alter the result in this instance, and we reject the appellant's contention that there are material facts in dispute requiring referral to the Office of Administrative Law for a hearing pursuant to N.J.A.C. 6A:28-1.14(a). The gravamen of the complaints against the appellant is that he failed to include the full Board in the decision to terminate Jones' employment. If proven, this conduct alone would provide the basis for a finding that the appellant had violated N.J.S.A. 18A:12-24.1(c) and (d) of the Code of Ethics for School Board Members. We stress in that regard that at no time during these proceedings has the appellant disputed the fact that he excluded Board member Annette Johnson from the decision-making process to seek Jones' resignation and to have a severance agreement drafted by the Board's counsel for her signature. Indeed, as reported by the School Ethics Commission, the appellant admitted at the probable cause hearing that he did not talk to Johnson about terminating Jones' employment "because he did not trust Ms. Johnson to keep the matter confidential." School Ethics Commission's Decision, slip op. at 5. The appellant does not dispute this account of his testimony.

In support of his position that there are material facts in dispute, the appellant submits that Johnson was aware of issues about Jones' performance. In a certification filed with the School Ethics Commission, the appellant averred:

As I testified to at the Commission meeting, the entire Board has been aware since 2001 of the types of performance and behavioral problems Ms. Jones had that resulted in the Board ultimately seeking her resignation. In 2002 the Board unanimously decided to ask Ms. Jones to take a leave of absence in order that she could take some time away from

the school, and hopefully return more focused and performing at a better level. I would note that Ms. Johnson was present for all of these discussions, and was in full support of the decision that Ms. Jones needed to take some time off due to these problems.

Certification of Paul Schaefer, at 2-3.

As stressed by the Commission, however, “knowing that performance issues exist with an administrator is not the same as knowing that the administrator is going to be terminated.” School Ethics Commission’s Decision, slip op. at 6. We reiterate in that regard that the appellant does not dispute the critical material fact which is decisive to a finding that he violated N.J.S.A. 18A:12-24.1(c) and (d) of the Code of Ethics for School Board Members, i.e., that he excluded Board member Johnson from the decision-making process to seek Jones’ resignation and to have a severance agreement drafted for her signature. The absence of a dispute regarding this fact is further underscored by the certification of Amal Manassah, the other member of the charter school’s Board of Trustees, who, while contending that “[i]t would be untrue to conclude that Mr. Schaefer somehow excluded Ms. Johnson from participation in this issue,” acknowledged that “during the days prior to December 19, 2002 [when Jones was offered the severance agreement] Mr. Schaefer did not speak to Ms. Johnson about Ms. Jones’ resignation.” Certification of Amal Manassah, at 3. As the Commission stated, “one board member does not have the right to determine that another board member will be denied access to the same information as the other board members.” School Ethics Commission’s Decision, slip op. at 6.

Consequently, we fully concur with the School Ethics Commission that there are no material facts in dispute with regard to the allegation involving Karen Jones.

Furthermore, we agree that the appellant's conduct in this regard violated N.J.S.A. 18A:12-24.1(c) and (d) of the Code of Ethics for School Board Members.

However, we disagree with the Commission that a violation of the Act has been demonstrated with regard to the appellant's actions in the hiring of Barry Fields. The record indicates that Fields, a member of the charter school's Board of Trustees, resigned from the Board during its meeting of October 17, 2002 and then presented the Board with a proposal to become the school's Information and Technology Consultant. It is uncontradicted that, prior to his resignation from the Board, Fields had volunteered his time and services to assist the charter school in resolving computer and technology issues on an ad hoc basis. The minutes of the October 17 meeting relate: "It was agreed the work Mr. Fields was performing for the school warranted him compensation. In compliance with the law, Mr. Fields chose to resign from the Board in order to receive compensation for his services." Certification of Paul Schaefer, Exhibit E. Fields confirmed that he had "resigned from the Board first precisely because I was concerned that it would be inappropriate for me to simultaneously serve on the Board and receive compensation for the services I was performing." Certification of Barry Fields, at 5.

Our review of the record fails to reveal any indication that the appellant used his position on the Board of Trustees to "secure unwarranted privileges, advantages or employment" for Fields in violation of N.J.S.A. 18A:12-24(b) of the Act. Nor does the record support the Commission's conclusion that the appellant and Fields, rather than the Board, made the decision to hire him. Fields, who had been providing technology assistance to the school on a voluntary basis, resigned from the Board prior to his appointment. Nor is there support in the record for the Commission's supposition that



Board member Amal Manassah had not made an informed decision on Fields' hiring since she had just joined the Board. Indeed, we find such conclusion to be pure conjecture. Thus, on the basis of the record before us, we conclude that a violation of the Act has not been demonstrated with regard to the hiring of Barry Fields.<sup>7</sup>

In view of our finding that the appellant violated the School Ethics Act only with regard to the termination of Karen Jones' employment, and, on the basis of the record before us without consideration of Johnson's testimony at the probable cause hearing, we conclude that the appropriate sanction is a reprimand. Therefore, we set aside the Deputy Commissioner's directive removing the appellant from his membership on the Board of Trustees – which was predicated on the School Ethics Commission's conclusion that the appellant had violated the Act both with regard to the termination of Jones and the employment of Fields – and direct that he be reinstated to the Board. We further direct that the appellant be reprimanded for violating N.J.S.A. 18A:12-24.1(c) and (d) of the Code of Ethics for School Board Members in excluding Board member Johnson from the decision-making process to seek Jones' resignation and to have a severance agreement drafted for her signature.

Attorney exceptions are noted.

September 1, 2004

Date of mailing \_\_\_\_\_

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<sup>7</sup> In light of such determination, we need not address the appellant's contention that there are material facts in dispute with regard to the Fields allegation requiring referral to the Office of Administrative Law for a hearing.