
IN THE MATTER

OF

**PAUL SCHAEDEER,
GOLDEN DOOR CHARTER SCHOOL
HUDSON COUNTY**

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**BEFORE THE SCHOOL
ETHICS COMMISSION**

Docket #C03/C04/C06/C07/C12-03

DECISION

PROCEDURAL HISTORY

This matter arises from five complaints filed against Mr. Paul Schaefer, Chairman of the Board of Trustees of the Golden Door Charter School, for violations of the School Ethics Act, N.J.S.A. 18A:12-21 *et seq.* Specifically, they alleged that he, without the consultation of the Board, forced the Chief Academic Officer to resign and that he appointed his former fellow trustee as a consultant within a month after he resigned from the Board. The complaints also raised various allegations that he misused his position in connection with the number of trustees on the Board, that he had police called to a public meeting on January 16, 2003 and that he discriminates against African-American parents and trustees.

Mr. Schaefer answered the complaints admitting that the Chief Academic Officer had been released from her duties and that a former trustee had been hired as a consultant, but denied having committed any violation of the School Ethics Act in connection with those matters. He denied the remainder of the allegations.

The five complaints were consolidated for hearing. The School Ethics Commission advised the parties that it would discuss this matter at its meeting of May 1, 2003. The parties were advised of their right to bring counsel and witnesses. All parties appeared with counsel and witnesses. The complainants were represented by Joseph Pojanowski, Esq. The respondent was represented by Richard West, Esq. The Commission heard testimony from most of the parties and witnesses. At its public meeting on May 27, 2003, the Commission voted to find probable cause to credit the allegations that Mr. Schaefer violated N.J.S.A. 18A:12-24.1(c) and (d) of the Code of Ethics for School Board Members in connection with the dismissal of the Chief Academic Officer and N.J.S.A. 18A:12-24(b) of the School Ethics Act in connection with the hiring of the Information Technology Consultant. The Commission dismissed the remainder of the charges, so they are not addressed herein.

Mr. Schaefer was given 30 days from the date of the decision to respond to the probable cause decision. He was advised that if he disagreed with the Commission's determination that the material facts were not in dispute, he could set forth each fact that he believed was in dispute and why the fact was material to resolution of this matter. The Commission received a timely response, which it considered at its meeting of August 26, 2003. After consideration of the issues raised in the response, the Commission voted at its public meeting to find Mr. Schaefer in

violation of N.J.S.A. 18A:12-24.1(c) and (d) of the Code of Ethics for School Board Members and N.J.S.A. 18A:12-24(b) of the prohibited acts in the School Ethics Act and recommend his removal from the Board of Trustees. The Commission adopted this decision at its meeting of September 23, 2003.

FACTS

The Golden Door Charter School is located in Jersey City, New Jersey. Approximately 500 students attend the school. When it was chartered, the charter provided that the school was to have between five and eleven trustees. At all times relevant to the allegations in the complaints, the school was operating with a three-member Board of Trustees. Apparently the by-laws were changed to allow for a three-member Board, but the changes were never approved by the Commissioner of Education. At the present time, the Board consists of seven members.

I. The Termination of the Chief Academic Officer

Karen Jones was hired in January 1999 as the director of the Golden Door Charter School. Her title at all times relevant to this complaint was Chief Academic Officer. Annette Johnson has been a member of the Board since 1999 and has a child in the school. Paul Schaefer is the Chairman of the Board of Trustees. Amal Manassah is also a member of the Board, having replaced Trustee Barry Fields in October 2002.

In March 2002, due to concerns with Ms. Jones' performance, an agreement was made to give Ms. Jones a 2½ month sabbatical. Ms. Johnson was aware of that agreement. Mr. Schaefer testified that Ms. Jones did not improve after she returned. He testified that he and Mr. Fields drew up an improvement plan and discussed it with her in the summer of 2002 and then in September 2002, Ms. Jones signed off on it.

On December 19, 2002, a regular meeting of the Board of Trustees was canceled. However, the three trustees did have a meeting for the purpose of discussing Karen Jones. The testimony of Trustee Annette Johnson was undisputed regarding this matter. Ms. Johnson testified that on December 19, 2002, she came to the school for what she thought was a meeting with Ms. Jones to evaluate her performance. However, two members from Foundations, Inc., Mr. Funston and Mr. Kurtz, were present. Foundations, Inc. is the consulting company utilized by the school. Mr. Schaefer and Ms. Manassah were also present with an attorney. Ms. Johnson was given a copy of a four-page severance agreement regarding the termination of Ms. Jones. Prior to that date, Mr. Schaefer had never indicated to her that he spoke with anyone to facilitate Ms. Jones' removal. Although Ms. Johnson admitted that the Board had discussed problems with Ms. Jones' performance, she was completely surprised by the action. Even more surprised was Ms. Jones because she thought she was only going to be evaluated at the meeting. She requested time to think it over. According to Mr. Funston, Ms. Jones was told that she could sign and rescind the agreement within six or seven days. She signed the agreement later the next day.

A bill from the School attorney sets forth that the attorney drafted the severance agreement and e-mailed it to the client on November 25, 2002. In December, prior to the December 19th meeting, Mr. Schaefer informed Ms. Manassah of the pending forced resignation. Mr. Schaefer testified that only two of the three board members were notified of the decision to terminate the employment of Ms. Jones because he did not trust Ms. Johnson to keep the matter confidential. Mr. Schaefer testified that Ms. Jones was told that she had 21 days to review the agreement and respond. The following day, Ms. Jones voluntarily executed the Agreement which, among other things, provided her with a 7-day period in which to revoke her signature. Ms. Jones' submitted a letter of resignation to the Board on December 20, 2002.

At a meeting of the Board of Trustees on January 16, 2002, all three members of the Board, including Annette Johnson, voted in favor of accepting the agreement after an executive session to discuss it.

Each of the complainants and their witnesses testified that the students and parents were very emotional about Ms. Jones' removal when they found out on December 20, 2002.

Mr. Schaefer appointed an administrator in the school, Brian Stiles, to replace Ms. Jones on December 20, 2002.

II. The Hiring of a Former Board Member as Information Technology Consultant

Barry Fields became a member of the Board with Ms. Johnson in 1999. In 2000, Mr. Fields began performing information technology services for the school without charging for his services. At the October 17, 2002 meeting of the Board of Trustees, the Board appointed a new board member. The minutes indicate that, after a search from a list of ten potential candidates for board membership, Chairman Schaefer invited Amal Manassah to join the Board. The Board interviewed her in executive session, then reentered public session and voted 3-0 to invite her to join the Board. The meeting minutes go on to set forth:

Following Ms. Manassah joining the Board, Mr. Fields resigned and presented a proposal for Information and Technology Consultant. 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.

Ms. Johnson testified that the proposal was tabled at that time. However, in the minutes, there is no motion or vote before adjournment of the meeting. There is no mention of the proposal at the November 21, 2002 meeting. The December 19, 2002 meeting is noted as cancelled despite the meeting of the three trustees on this date. Ms. Johnson recalled that on December 20, 2002, the Board talked with Mr. Fields regarding the proposal. However, by that time, it appears that he had already entered into an agreement with Mr. Schaefer and was paid \$50.00 per hour for November and December.

A representative from Foundations, Inc. certified that this is well below the market rate for such services. Foundations, Inc. certified that it would charge \$750.00 per day to provide such consultant services.

The Board of Trustees never approved the hiring or appointment of Barry Fields prior to his beginning employment with the District.

ANALYSIS

The Commission determined that there was probable cause to credit the allegations that Mr. Schaefer violated N.J.S.A. 18A:12-24.1(c) and (d) in connection with the termination of Ms. Karen Jones and that he violated N.J.S.A. 18A:12-24(b) in connection with the hiring of a former board member to serve as a consultant to the District. Mr. Schaefer raised several issues in response to the finding of probable cause and argued that the complaint should be dismissed. These will be addressed in turn.

I. The Termination of the Chief Academic Officer

In response to the Commission's finding of probable cause that he violated N.J.S.A. 18A:12-24.1(c) and (d) in connection with the termination of the Chief Academic Officer, Mr. Schaefer first argues that, as a member of a charter school board of trustees, he is not subject to the Code of Ethics for School Board Members, N.J.S.A. 18A:12-24.1. He cites N.J.S.A. 18A:36A-3 of the Charter School Program Act for the proposition that a charter school, although a public school, "is operated independently of a local board of education and is managed by a board of trustees." He argues that the Code of Ethics does not state that it applies to members of a charter school board of trustees; rather, it applies to "board members" as that term is defined in N.J.S.A. 18A:12-23. Although he acknowledges that the State Board promulgated regulation N.J.A.C. 6A:11-3.1, effective October 2, 2000, which provides that the members of a board of trustees of a charter school shall be "school officials" as defined in the School Ethics Act, he argues that the Code of Ethics was enacted after that in July 2001 and no regulation was promulgated that made members of a charter school board of trustees subject to the Code of Ethics for School Board Members.

The Commission finds that Mr. Schaefer's interpretation of the Code of Ethics obliterates the intent and purpose of the Code of Ethics and ignores a crucial provision of the Charter School Program Act, which provides:

A charter school shall operate in accordance with its charter and the provisions of law and regulation which govern other public schools; except that, upon the request of the board of trustees of a charter school, the commissioner may exempt the school from State regulations concerning public schools, except those pertaining to assessment, testing, civil rights and student health and safety, the board of trustees satisfactorily demonstrates to the commissioner that the exemption will advance the educational goals and objectives of the school. [N.J.S.A. 18A:36A-11a]

Thus, from the initiation of charter schools in 1996, the Legislature envisioned that charter schools would be subject to all of the laws that govern other public schools. Their structure and management may be different, but the laws that govern them are the same. Charter schools may only be exempt from regulations and that is by request to the Commissioner of Education. They cannot be exempt from laws. Therefore, it is clear that the State Board, in promulgating N.J.A.C. 6A:11-3.1, was not making new law, but effectuating the above provision of the Charter School Program Act. In view of N.J.S.A. 18A:36A-11, there is no need for the State Board to revisit its regulation each time that the Legislature amends the School Ethics Act in order to clarify that the amendment applies to charter school trustees. It applies, in its entirety, to members of charter school boards of trustees.

For the foregoing reasons, the Commission concludes that Paul Schaefer, as a member of a charter school board of trustees, is subject to the Code of Ethics for School Board Members and declines to dismiss the charges that he violated N.J.S.A. 18A:12-24.1(c) and (d).

Mr. Schaefer next argues in response to the finding of probable cause that he did not violate the Code of Ethics because the majority of the Board supported the decision to terminate Ms. Jones and the entire board and Ms. Jones had been aware for many months prior to this action of the issues that prompted this decision.

The Commission found probable cause that Mr. Schaefer acted without board approval in executing the termination of Ms. Jones in violation of N.J.S.A. 18A:12-24.1(c) and (d) of the Code of Ethics.

N.J.S.A. 18A:12-24.1(c) provides:

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.

Mr. Schaefer argues that the Board was aware of issues concerning Ms. Jones' performance and voted to approve the severance agreement. He set forth that Ms. Jones voluntarily executed the Severance Agreement and General Release the day after it was presented to her although she was told that she had 21 days to consider it. Thereafter, she was provided with seven days to revoke her signature, but she did not revoke it. Rather, she provided a resignation letter to the Board. During its meeting of January 16, 2002, the Board, including Annette Johnson, voted in favor of accepting the agreement. Mr. Schaefer argues that Ms. Jones' letter to the Board of December 20, 2002 indicates that she had reason to know that her termination was forthcoming.

The Commission does not dispute that Mr. Schaefer had discussed with the other trustees that there were concerns about Ms. Jones' performance prior to her termination. However, the Commission notes that Ms. Manassah became a trustee in October 2002, just before this action took place. The Commission does not dispute Mr. Schaefer's argument that Ms. Johnson was

aware that there were issues concerning Ms. Jones' performance. However, knowing that there are concerns with an administrator's performance and firing that administrator are two different matters. Mr. Schaefer admitted that he did not include Ms. Johnson in the decision-making process on the Jones matter because he did not feel that he could trust her to keep it confidential. Under the Code of Ethics, 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. Further, the evidence showed that, at a board meeting on January 16, 2003, Mr. Schaefer admitted that he initiated the paperwork regarding Ms. Jones' departure prior to the knowledge of any fellow board members. This was also confirmed by the bill from the board attorney dated February 21, 2003, listing the preparation of the severance agreement on November 25, 2002, well before any trustee was advised that termination was imminent. Trustee Manassah had just joined the Board in October 2002. Trustee Johnson testified that she only became aware of Ms. Jones' termination when she saw the severance agreement in December 2002. This testimony was unrefuted. Again, knowing that performance issues exist with an administrator is not the same as knowing that the administrator is going to be terminated. Ms. Johnson reasonably expected that an evaluation or review of a corrective action plan would precede presenting Ms. Jones with a severance agreement. Yet, Mr. Schaefer initiated the preparation of a severance agreement and only Mr. Schaefer and Ms. Manassah knew about its existence. Ms. Johnson was informed at the meeting with Ms. Jones that led to her termination.

The Commission finds that the termination of Ms. Jones was initiated and completed by Mr. Schaefer and he sought approval of the full board after the fact. Mr. Schaefer has not set forth any argument to change what the Commission found in its probable cause determination. The fact that Ms. Jones resigned after being terminated and all trustees eventually ratified the severance agreement is irrelevant to the suspect circumstances surrounding the termination. The circumstances defy all notions of fairness and respect owed to the Chief Academic Officer of a school. The Commission finds that Mr. Schaefer's conduct on such an important issue was in violation of N.J.S.A. 18A:12-24.1(c).

The Commission also found probable cause that Mr. Schaefer's conduct violated N.J.S.A. 18A:12-24.1(d) of the Code of Ethics. N.J.S.A. 18A:12-24.1(d) provides:

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.

As set forth above, Mr. Schaefer did not act in concert with his fellow Board members. He unilaterally decided that Ms. Jones should be terminated, as shown by the bill from the attorney, and admittedly kept a Board member uninformed who he believed would disagree with his decision and possibly inform Ms. Jones or her supporters. The Commission finds that, by so doing, Mr. Schaefer administered the schools instead of acting with his fellow Board members to see that the schools are well run in violation of N.J.S.A. 18A:12-24.1(d).

The Commission did not find probable cause that Mr. Schaefer's conduct violated N.J.S.A. 18A:12-22(a) and (b) because section 22 sets forth the Legislature's findings and declarations. Section 22(a) sets forth:

The Legislature finds and declares:

a. In our representative form of government it is essential that the conduct of members of local boards of education and local school administrators hold the respect and confidence of the people. These board members and administrators must avoid conduct which is in violation of their public trust or which creates a justifiable impression among the public that such trust is being violated.

Section 22 indicates the Legislature's purpose for the Act. While the Commission has said in prior decisions that Section 22 does not set forth a prohibited act that the Commission can charge a school official with violating, In the Matter of Wesley Smith, C28-97 (April 28, 1998), the Commission has cited to section 22 to support a charge. In the present case, the Commission believes that in finding Mr. Schaefer in violation of N.J.S.A. 18A:12-24.1(c) and (d), it is ensuring that the conduct of school officials does not violate the public trust as set forth in N.J.S.A. 18A:12-22(a).

II. Mr. Schaefer hired former Board member Barry Fields to be the School's Information Technology Consultant.

The Commission found probable cause that Mr. Schaefer used his position to secure unwarranted privileges, advantages or employment for Mr. Fields under N.J.S.A. 18A:12-24(b). The Commission found that the Board was never presented with a contract for Mr. Fields, but he was paid thousands of dollars. The Commission was not provided evidence that a contract was ever approved by the Board.

The minutes from the October 17, 2002 meeting at which Mr. Schaefer, Mr. Fields and Ms. Johnson were present as board members indicate that Chairman Schaefer invited Amal Manassah to join the Board. She was approved by a vote of 3-0. Mr. Fields then resigned and presented a proposal for him to become the Information and Technology Consultant. The minutes make it clear that Mr. Fields resigned from the Board for the purpose of being able to receive compensation for his services. He began receiving compensation for those services without any motion or vote by the Board. Mr. Schaefer admitted that Mr. Fields resigned from the Board to take on the job, but says he did so because the volunteer work was becoming a full-time job.

Mr. Schaefer's responds to the Commission's finding that he cannot be held personally responsible for the hiring of Barry Fields when he was just one member of a unanimous Board. Additionally, he argues that the employment was not unwarranted because, prior to his resignation from the Board, Mr. Fields had volunteered his expertise to aid the computer/technology programs of Golden Door. He said the consultant agreement with Mr. Fields cost much less than other consultants such as Foundations, Inc., which would charge \$750.00 per day to provide similar services. He adds that the outside accountant for the Charter School recommended that this action be taken and he relied on the accountant's position.

The issue before the Commission is whether Mr. Schaefer used his position to secure unwarranted privileges, advantages or employment for Mr. Fields in violation of N.J.S.A. 18A:12-24(b). The Commission does not discount Mr. Schaefer's response, but his response seems to imply that at some point there was an actual vote on the matter at a public meeting. There was none. It also assumes that there was a contract entered into before Mr. Fields started to get paid. There was not. The Commission believes that the manner in which the hiring took place was the unwarranted privilege and advantage that Mr. Fields received as a former member of the Board, not the hiring itself, which was apparently recommended. The Commission holds Mr. Schaefer responsible for the manner in which Mr. Fields was hired because he was the Board President when the action took place. Ms. Manassah had just become a trustee minutes before the decision was made to make Mr. Fields a consultant. Thus, it is disingenuous to suggest that Ms. Manassah made an informed decision as to whether he should be hired. The full board did not make the decision. It is clear from the minutes that Mr. Fields and Mr. Schaefer made that decision. Further, the outside accountant may have recommended hiring Mr. Fields, but it did not recommend a stealth hiring and payment being made without a contract. The manner in which the hiring took place did not provide the public with any notice that there was a need to hire an Information Technology Consultant. Further, it did not give the public the opportunity to determine why Mr. Fields was preferred to any other provider of the service. The Commission reiterates from its probable cause determination that the information submitted by Foundations -- that other providers charge much more, should have been part of the public discussion of the issue, not presented in a closed hearing before the Commission. Therefore, the Commission finds that Mr. Schaefer used his position to secure an unwarranted privilege and advantage for Mr. Fields in violation of N.J.S.A. 18A:12-24(b).

DECISION

For the foregoing reasons, the Commission finds that Mr. Schaefer violated N.J.S.A. 18A:12-24.1(c) and (d) in connection with the termination of Ms. Jones and violated N.J.S.A. 18A:12-24(b) in connection with the hiring of former trustee Barry Fields.

The Commission considered Mr. Schaefer's response to the finding of probable cause that argued that the matters for which he is being disciplined were decisions of the full board, but the evidence showed the opposite. Regarding Ms. Jones, the Board's approval was sought only after Ms. Jones had been presented with the severance agreement. Regarding Mr. Fields, the Board's approval was never sought. Mr. Schaefer has acted as a one-member board and in so doing has violated the Code of Ethics and the standards of conduct expected of board members in general. The Commission finds his conduct to be so egregious that only the penalty of removal would be appropriate. Therefore, the Commission recommends that Paul Schaefer be removed from the Golden Door Charter School Board of Trustees.

Paul C. Garbarini
Chairperson

Resolution Adopting Decision – C03/C04/C06/C07/C12-03

Whereas, the School Ethics Commission has considered the pleadings filed by the parties, the documents submitted in support thereof and the testimony presented; and

Whereas, at its meeting of August 26, 2003, the Commission found that Paul Schaefer violated N.J.S.A. 18A:12-24.1(c) and (d) and N.J.S.A. 18A:12-24(b) of the Act and recommended that the Commissioner of Education impose a sanction of removal; and

Whereas, the Commission requested that its staff prepare a decision consistent with the aforementioned conclusion; and

Whereas, at its meeting of September 23, 2003, the Commission reviewed the draft decision and agrees with the decision;

Now Therefore Be It Resolved that the Commission hereby adopts the proposed decision referenced as its decision in this matter and directs its staff to notify all parties to this action of the Commission's decision herein.

Paul C. Garbarini, Chairperson

I hereby certify that this Resolution was duly adopted by the School Ethics Commission at its public meeting on September 23, 2003.

Lisa James-Beavers
Executive Director