

<hr/>	:	BEFORE THE SCHOOL
IYANNA JONES	:	ETHICS COMMISSION
	:	
v.	:	
	:	
PAUL SCHAEDEER, CYNTHIA	:	Docket No. C28-03
WALSTON, AMAL KASSAN	:	
ELIZABETH FLORES and	:	
FERDINAND FUENTES	:	
<i>GOLDEN DOOR CHARTER SCHOOL</i>	:	
<i>HUDSON COUNTY</i>	:	DECISION
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PROCEDURAL HISTORY

This matter arises from a complaint filed by Iyanna Jones, alleging that five members of the Board of Trustees (“Board”) of the Golden Door Charter School violated various provisions of N.J.S.A. 18A:12-24 of the School Ethics Act and the Code of Ethics for School Board Members set forth at N.J.S.A. 18A:12-24.1.

Complainant alleges that the Board’s Chairperson Paul Schaefer violated the Act when he failed to provide to the board members a report from the Department of Education’s Office of Compliance Investigation (“Compliance Report”) to the board members and to the public as required by the Department of Education. Complainant further alleges that Board members violated the Code of Ethics when they failed to provide information contained in the report to the public. Complainant also alleges various violations by the Chairperson and the Board concerning improper notification a public meeting and improper conduct at the meetings.

In lieu of an answer, Respondents filed a Motion to Dismiss the Complaint. Therein, they seek dismissal contending that there is no law or regulation requiring that the Compliance report be shared with the public. They further state that none of the other provisions of the School Ethics Act cited by Complainant apply to the facts presented herein. Additionally, Respondents submit certifications responding to specific factual allegations raised in the Complaint.

The Commission invited the parties to attend its meeting on October 28, 2003, to present witnesses and testimony to aid in the Commission’s investigation. Prior to hearing testimony, the Commission granted the Respondents’ Motion to Dismiss in part, dismissing paragraphs three and six of the complaint. Paragraph three alleged that respondent violated N.J.S.A. 18A:12-24.1(g) in connection with alleged violations of N.J.S.A. 10:4-6, the Open Public Meetings Act (“OPMA”). Paragraph six alleged that board trustee Cynthia Walston violated N.J.S.A. 18A:12-24(a) when she physically attacked the complainant. The School Ethics Commission is without jurisdiction to review allegations of violations of the OPMA. Such allegations are only justiciable by the Superior Court or by the Commissioner of Education when the OPMA allegation is

ancillary to a controversy or dispute arising under the school laws. Sukin v. Northfield Board of Education, 171 N.J. Super. 184 (App. Div. 1979). Regarding paragraph six, the Commission reviewed N.J.S.A. 18A:12-24(a), which prohibits a school official or member of his immediate family from having an interest in a business organization or engage in any business, transaction, or professional activity that is in substantial conflict with the proper discharge of his duties in the public interest, and determined that it does not apply to allegations that a board member committed assault or engaged in other improper conduct. N.J.S.A. 18A:12-24(a) addresses situation where a school official has a conflict of interest. Consequently, the Commission had to dismiss the allegations in paragraph six.

The Commission proceeded to hear testimony on the remaining allegations. Complainant Iyanna Jones appeared *pro se*. Respondents were represented by attorney Richard West, Esq. Respondents Cynthia Walston, Amal Kassam, Elizabeth Flores and Ferdinand Fuentes testified. Respondent Paul Schaefer attended the meeting but did not testify. John Funston, a representative for Foundations, Inc., consultants to the Golden Door Charter School, also testified on behalf of the respondents.

At its public meeting on December 16, 2003, the Commission voted to find no violation of the remaining allegations, N.J.S.A. 18A:12-24.1(a), (d), (f), and (g) and to dismiss the complaint. The Commission adopted this decision at its meeting of January 27, 2004.

FACTS

The Commission discerned the following facts on the basis of the pleadings and certifications, documents, video and audio tapes submitted and the testimony.

Respondent Paul Schaefer was the Chairperson of the Golden Door Charter School Board of Trustees at the time these allegations were made. He and all other Respondents are members of the Charter School Board of Trustees (“Board”) for the Golden Door Charter School in Jersey City, New Jersey.

On May 19, 2003, the Department of Education’s Office of Compliance Investigation sent a report to Chairperson Paul Schaefer setting forth findings of various violations of law and regulation by the Golden Door Charter School Board of Trustees. The report included recommendations and required that the Board submit a corrective action plan in response. The Compliance Report directed Mr. Schaefer to share a copy with each of the board members of the findings and recommendations.

Prior to a public meeting scheduled for June 26, 2003, Complainant asked that the Board place on the agenda the matter of removing Chairperson Paul Schaefer from his position. This item was not placed on the agenda. Four respondents testified that Mr. Schaefer sends out e-mail asking for agenda items and they have been able to have items placed on the agenda in this fashion. Complainant disputed this.

At the public meeting of the Board on June 26, 2003, John Funston read the recommendations of the Office of Compliance but neither he nor any administrator provided copies of the full report. The Chairperson did not share the Compliance Report with the Board members nor did he read it to members of the public at the meeting. Board member Iyanna Jones had received a copy from the Department of Education. She asked that the Report be shared with the Board members and members of the public.

At the executive session meeting on the same date, Mr. Schaefer made a recommendation to have Complainant and another member removed from their position as members of the Golden Door Charter School Board of Trustees. A straw poll was taken and the members determined to make the motion to remove Ms. Jones at the public meeting. The Board continued to discuss numerous issues in executive session that do not fall within any of the exceptions to the requirement to hold meetings in public. When the Board returned to the public meeting, Cynthia Walston made the motion to remove Ms. Jones from her position. The five respondents voted in favor of the motion.

The videotape of the meeting shows that an altercation took place that evening following the removal of Ms. Jones involving Board members and members of the public. The tape was not clear as to who started the altercation or to whom it was directed.

ANALYSIS

Complainant alleges that Respondents violated the Code of Ethics set forth at N.J.S.A. 18A:12-24.1(a), (d), (f) and (g). Complainant has the burden of proving factually that a violation of the Code of Ethics has occurred pursuant to N.J.S.A. 18A:12-29(b).

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

I will uphold and enforce all laws, rules and regulations of the State Board of Education, and court orders pertaining to schools. Desired changes shall be brought about only through legal and ethical procedures.

Complainant alleges that respondents violated this provision when they failed to read the Office of Compliance Investigation Report publicly or distribute it to other board members. The Commission was unable to find any law, rule or regulation of the State Board or court order that requires an Office of Compliance Investigation Report to be read publicly or distributed to board members. While it is a policy of the Department's Office of Compliance that its reports be read and discussed with board members and members of the public, and this policy was conveyed to Chairperson Schaefer in the correspondence from the Department, dissemination of the Compliance Report is not required by law. Therefore, the Chairperson's failure to share this report is not a violation of the above provision. The Commission finds that the other respondents were not provided with a copy of the Report. Therefore, they cannot be held responsible for

the withholding of information contained therein, even if it were legally required. The Commission therefore concludes that the Board members did not violate N.J.S.A. 18A:12-24.1(a).

N.J.S.A. 18A:12-24.1(d) sets forth:

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.

Complainant alleges that respondents violated N.J.S.A. 18A:12-24.1(d) when they had certain items placed on the agenda and did not provide her with Board minutes. It is standard practice for the Chairperson of a Board to determine which items to place on the agenda for a meeting. The Commission does not view the Chairperson's failure to share the Compliance Report or his failure to provide all Board members with minutes as overstepping his role as a board member. This is not to say that the Commission condones such alleged conduct but only that it does not view it as an impermissible attempt to administer the schools in violation of N.J.S.A. 18A:12-24.1(d).

N.J.S.A. 18A:12-24.1(f) sets forth:

I will refuse to surrender my independent judgment to special interest or partisan political groups or to use the schools for personal gain or for the gain of friends.

Complainant alleges that respondents violated this subsection when they followed Mr. Schaefer's suggestion that they remove her from the Board. The board members voted in favor of a Resolution presented by the Chairperson to remove Ms. Jones. The information in the record shows that the removal of Iyanna Jones was recommended by the Chairperson and that the Board members were freely able to vote on acceptance or rejection of this Resolution. The respondents testified as to their individual reasons for voting in favor of the resolution and their testimony affirms that their votes were taken independently. In fact, the Board members rejected the Chairperson's proposal to remove another Board member, according to the testimony of Cynthia Walston. Thus, the Commission finds no probable cause that Respondents violated subsection (f).

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

I will hold confidential all matters pertaining to the schools which, if disclosed, would needlessly injure individuals or the schools. In other matters, I will provide accurate information and, in concert with my fellow board members, interpret to the staff the aspirations of the community for its school.

Complainant's allegations do not set forth a claim that Respondents disclosed personal information outside of the board meetings where they have the authority to carry out all school policies as board members. Also, the allegation that there was a failure to

provide accurate information to a Board member or to the public does not apply herein. Mr. Schaefer provided incomplete information by revealing only the recommendations of the Office of Compliance and not the findings. Therefore, N.J.S.A. 18A:12-24.1(g) does not apply to the facts as alleged.

DECISION

Accordingly, the Commission finds no violation of the Code of Ethics for Board Members in the School Ethics Act as set forth at N.J.S.A. 18A:12-24.1(a), (d), (f) or (g) and this complaint is dismissed.

The Commission is concerned, however, that this Chairperson did not follow a directive and policy from the Department of Education in failing to read the Office of Compliance Investigation's report. Further, the Commission reminds the parties that Board business must be conducted in a public forum in compliance with the Open Public Meetings Act ("OPMA"), as set forth at N.J.S.A. 10:4-6 et seq. The Board is reminded to take such steps in the future in order to avoid the risk of ethics charges or charges before the Prosecutor's Office being filed against it in the future.

This decision is a final decision of an administrative agency. Therefore, it is appealable only to the Superior Court--Appellate Division.

Paul C. Garbarini
Chairperson

Resolution Adopting Decision – C28-03

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

Whereas, the Commission finds no probable cause that Respondents violated N.J.S.A. 18A:12-24(a) and finds no violation of N.J.S.A. 18A:12-24.1(a), (d), (f) or (g) of the Code of Ethics within the School Ethics Act; and

Whereas, the Commission has reviewed the proposed decision of its staff dismissing the complaint; and

Whereas, the Commission agrees with the proposed 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 the Resolution was duly adopted by the School Ethics Commission at its public meeting on February 3, 2004.

Lisa James-Beavers
Executive Director