

625-03 SEC

IN THE MATTER OF PAUL SCHAEDER, :

GOLDEN DOOR CHARTER SCHOOL, : COMMISSIONER OF EDUCATION

JERSEY CITY, HUDSON COUNTY. : DECISION

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SYNOPSIS

The School Ethics Commission determined that respondent Board member violated *N.J.S.A.* 18A:12-24.1(c) and (d) by acting as a “one-member board” in terminating the Chief Academic Officer. The Commission further found that respondent violated *N.J.S.A.* 18A:12-24(b) in hiring a former Board member as technology coordinator without Board approval. The Commission recommended removal of respondent.

Upon review of the record, the Deputy Commissioner, to whom the matter was delegated pursuant to *N.J.S.A.* 18A:4-33 and whose decision was restricted by law solely to a review of the Commission’s recommended penalty, concurred with the Commission’s recommendation. Respondent was ordered removed as of the filing date of this decision.

This synopsis is not part of the Commissioner’s decision. It has been prepared for the convenience of the reader. It has been neither reviewed nor approved by the Commissioner.
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November 10, 2003

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The record of this matter, and the recommendation of the School Ethics Commission (Commission) that respondent be removed as a member of the Board of Trustees of the Golden Door Charter School, have been reviewed. Respondent filed timely comments on the Commission's decision, which have been duly considered herein.

This matter comes before the Commissioner pursuant to *N.J.S.A.* 18A:12-29(c) and *N.J.A.C.* 6A:3-9.1 to impose a sanction upon respondent, who serves as Chairman of the Board of Trustees. The Commission's recommended sanction is based on its finding that respondent violated *N.J.S.A.* 18A:12-24.1(c) and (d) by unilaterally effectuating the termination of the Charter School's Chief Academic Officer and then seeking Board approval after the fact, and on its further finding that he violated *N.J.S.A.* 18A:12-24(b) by hiring, without Board motion or vote, a Board trustee who resigned from the Board expressly for the purpose of receiving compensation for his formerly voluntary technological services.

In his comments, respondent initially contends that the Commission exceeded its statutory authority by making factual findings without transmitting the matter to the Office of Administrative Law (OAL) for the full evidentiary hearing to

which respondent is entitled under the School Ethics Act and the Administrative Procedure Act; he further contends that, even assuming that the Commission *did* have the authority to hear the matter itself after determining that no material facts were in dispute, it clearly erred in doing so herein. (Respondent’s Comments at 1-4)<sup>1</sup> Respondent next contends that the Commission erred in its factfinding, ignoring testimony and certifications and making flawed credibility determinations, and overlooked the unusual and difficult circumstances with which respondent had to deal. (*Id.* at 4-6)

With respect specifically to the Commission’s recommendation of removal, respondent argues that even if the Commission’s findings were accepted, they still do not support the ultimate penalty of removal from the charter school Board of Trustees. All the Commission essentially found, respondent contends, was that respondent acted like a “one-member board” in taking actions he strongly believed to be in the school’s best interest; the Commission did not find that he in any way benefited personally from his decisions, nor did it find that his objectives were improper or illegal in themselves. Respondent notes that his actions were supported by the majority of the Board of Trustees, which unanimously reelected him as Chairman in 1998, 2001 and most recently on August 28, 2003, and that, at the time of his actions, the school was undergoing a period of difficulty and transition requiring strong, decisive leadership. Respondent thus avers that removal from the Board of Trustees would be unfair to him—who at most did not understand the parameters of his authority and who has had no previous instances of Ethics Act violations—and contrary to the best interests of a charter

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<sup>1</sup> Respondent submits, under cover of separate letter to the Commissioner, an example of the type of evidence he would bring to a full OAL hearing. However, in that applicable rules make no provision for the Commissioner to consider information outside the record, that submission is not considered herein.

school to which he has brought substantial improvement and stability, as well as to the will of its Board of Trustees and school community. (*Id.* at 4-9)

At the outset, the Deputy Commissioner, to whom the determination of this matter has been delegated pursuant to *N.J.S.A.* 18A:4-33, emphasizes that, in accordance with *N.J.S.A.* 18A:12-29(c) and *N.J.A.C.* 6A:3-9.1, only the School Ethics Commission may determine whether a violation of the School Ethics Act has occurred, and that the Commission's decision in that regard, including any underlying factfinding, discretionary procedural determinations and conclusions of law, is not reviewable herein. Rather, the Commissioner's jurisdiction is limited to review of any sanction the Commission may recommend based upon its decision that a school official has violated the Act.

Given the limitations of his review in this matter, and upon consideration of the record and respondent's arguments on exception, the Deputy Commissioner determines to accept the Commission's recommendation that respondent be removed as a member of the Golden Door Board of Trustees. In so ruling, the Deputy Commissioner is satisfied that the Commission, in recommending a penalty for the violations it found, considered both the nature of respondent's offense and his arguments as to why no penalty should be imposed, and he finds nothing in respondent's exceptions that would warrant disturbance of the Commission's judgment in concluding that respondent should be removed as a Trustee. Additionally, respondent's contention that the Commission lacked authority to hear this matter itself rather than refer it to the OAL is, in essence, a challenge to the facial validity of the Commission's procedural regulations (*N.J.A.C.* 6A:28-1.12), a challenge which is within the sole purview of the Appellate Division or

the Supreme Court. R. 2:2-3(a); *see, also, Pascucci v. Vagott*, 71 N.J. 40, 51-52 (1976); *Wendling v. N.J. Racing Com'n*, 279 N.J. Super. 477, 485 (App. Div. 1995). Furthermore, the Commission's finding, also protested by respondent, that no material facts were in dispute is a discretionary Commission determination authorized by *N.J.A.C.* 6A:28-1.12 and, as such, is not reviewable herein, but, rather, on appeal to the State Board of Education. Finally, although it is true that the Commission did not find respondent's actions illegal in themselves, the fact remains that it *could* not have made such a finding, since its authority is expressly limited to determination of School Ethics Act violations.<sup>2</sup>

Accordingly, IT IS hereby ORDERED that Paul Schaefer be removed from the Board of Trustees of the Golden Door Charter School, effective on the filing date of this decision, as a school official found to have violated the School Ethics Act.<sup>3</sup>

DEPUTY COMMISSIONER OF EDUCATION

Date of Decision: November 10, 2003

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<sup>2</sup> For example, the Commission would lack authority to determine whether the hiring of a former Trustee was in violation of *N.J.S.A.* 18A:12-1.1, as raised during preliminary proceedings in this matter.

<sup>3</sup> This decision, as the Commissioner's final determination regarding penalty in this matter, may be appealed to the State Board of Education pursuant to *N.J.S.A.* 18A:6-27 *et seq.*, *N.J.S.A.* 18A:12-29(d) and *N.J.A.C.* 6A:4-1.1 *et seq.* Commissioner decisions are deemed filed three days after the date of mailing to the parties.