

IN THE MATTER OF RONALD UDY, :  
DAVID A. EWART AND FRANK B. FRAZIER, :  
WOODSTOWN-PILESGROVE BOARD OF : COMMISSIONER OF EDUCATION  
EDUCATION, SALEM COUNTY. : DECISION  
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SYNOPSIS

In consolidated matters, the School Ethics Commission determined that respondent Board members violated *N.J.S.A.* 18A:12-24.1 *et seq.* After considering the nature of the charges, the Commission found that Respondent Udy violated *N.J.S.A.* 18A:12-24.1(a), (c), (d) and (f) of the Code of Ethics and Respondents Ewart and Frazier violated *N.J.S.A.* 1A:12-24.1(a) and (f) of the Code of Ethics when they overruled the recommendation of the superintendent not to renew the District's former Supervisor of Guidance, C.L., who did not have the requisite certification for such position, and when they voted to create a new administrative position for C.L. without the recommendation of the superintendent, surrendering their independent judgment to supporters of C.L. The Commission recommended removal for Udy and censure for Ewart and Frazier.

Upon review of the record, the Deputy Commissioner, to whom this matter has been delegated for review pursuant to *N.J.S.A.* 18A:4-33, and whose decision was restricted solely to a review of the Commission's recommended penalties, concurred with the Commission's recommendations of removal for Udy and censure for Ewart and Frazier. The Deputy Commissioner, however, in light of comments raising the troubling allegation of procedural errors in these consolidated matters, determined to stay the implementation of the penalties ordered, pending respondents' timely appeal to the State Board of Education.

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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The record of this consolidated matter and the decision of the School Ethics Commission (“Commission”) finding that Mr. Udy, Mr. Ewart and Mr. Frazier violated the Code of Ethics found at *N.J.S.A.* 18A:12-24.1 *et seq.* have been reviewed. Therein, the Commission found that Mr. Udy violated *N.J.S.A.* 18A:12-24.1(a), (c), (d) and (f) of the Code of Ethics and that Mr. Ewart and Mr. Frazier violated *N.J.S.A.* 18A:12-24.1(a) and (f) of the Code of Ethics. The Commission recommended a penalty of removal for Mr. Udy, and censure for Mr. Ewart and Mr. Frazier. Upon issuance of the decision of the Commission, respondents were provided 13 days from the mailing of the decision to file written comments on the recommended penalty for the Commissioner’s consideration.

Comments were filed on behalf of Mr. Udy and Mr. Ewart,<sup>1</sup> who primarily contend that they were denied due process in this matter. Respondents explain that the current matter was commenced by the filing of two complaints by John W. Morrison. Letters to

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<sup>1</sup> On October 14, 2003, the Bureau of Controversies and Disputes received a letter from counsel for Mr. Udy and Mr. Ewart which made reference to “exceptions” that were filed on October 3, 2003. However, since there was no record of that filing with the Bureau, counsel was asked to forward another copy, which was received on October 16, 2003. Additionally, counsel’s correspondence of October 14<sup>th</sup> appended a letter in support of the comments/exceptions. However, the Deputy Commissioner notes that in his review of a Commission decision, he is bound by the facts found by the Commission, as well as the Commission’s determination that the facts constituted a violation of the Code of Ethics. Since it is his role to act upon the Commission’s recommendation regarding sanction based upon the record it transmits to him, together with any written comments regarding the Commission’s recommended penalty that may be filed by a party to the matter, the additional evidence could not be considered.

respondents dated May 8, 2003 from the School Ethics Commission provided notice of the complaints and also acknowledged that the complaints alleged violations of the School Ethics Act, *N.J.S.A. 18A:12-21 et seq.* (Respondent Udy's and Ewart's Comments at 1-2)

Subsequent to the filing of their Answers, respondents were notified, by letters dated June 30, 2003, that, at the upcoming meeting scheduled for July 22, 2003, the Commission may take one of several actions; that is, the Commission "may table the matter and ask for additional information and/or advice, the Commission may dismiss the matter or the Commission may determine that probable cause exists." (*Id.* at 2) Thereafter, the meeting scheduled for July 22, 2003 was adjourned and rescheduled for August 26, 2003.

Respondents Udy and Ewart assert that, based on the aforementioned communications, "the litigants, including the Petitioner proceeded with the understanding that the August 26, 2003 meeting was to determine the existence of probable cause." (*Ibid.*) After that meeting, however, respondents report they were informed that the Commission found violations in both cases. Respondents Udy and Ewart, therefore, argue:

The Commission did not proceed in accordance with the Administrative Code. Accordingly, the Respondents have been deprived of a meaningful opportunity to be heard with regard to the allegations made against them. Since the Complaints alleged violations of the School Ethics Act, the Respondents had the right to expect that their case would be heard in accordance with the provisions of *N.J.A.C. 6A:28-1.14* if the Commission found probable cause. That procedure was clearly communicated to the Respondents by the Commission through the letter of its Executive Director dated June 30, 2003. There is no fairness in advising parties that they are attending a probable cause hearing, and then informing them, after the hearing, that they have been found guilty. (*Ibid.*)

Moreover, Udy and Ewart find it implausible that the Commission could, on this record, conclude that there were no facts in dispute. However, assuming, *arguendo*, that the

Commission did so find, respondents maintain that it was then obliged to notify them of their right to submit written statements setting forth the reasons they should not be found in violation of the Act, as provided in regulation. (*Id.* at 3) *N.J.A.C.* 6A:28-1.14.<sup>2</sup> Respondents reason that the Commission’s failure to afford them due process has harmed their respective reputations and, in Mr. Udy’s case, will serve to disenfranchise “the significant majority of residents” who voted for him. (*Id.* at 2) Respondents also take exception to the factual errors contained in the Commission’s decision which, they argue, demonstrate that the process used by the Commission “was defective and that its decision is unreliable.” (*Id.* at 3)<sup>3</sup>

On the issue of their respective penalties, although Respondents Udy and Ewart maintain that they did not violate either the Code of Ethics or the School Ethics Act, they urge the Commissioner to consider “the whole dispute, the merits of the positions advanced by the parties, the reasons for the actions of the Respondents and the extensive and distinguished service of the Respondents to their community.” (*Id.* at 7) They continue:

With regard to the proposal to rehire C.L., the respondents did nothing different than [*sic*] three predecessor Boards of Education. The proposal to fill the vacant position of Assistant Principal was supported by the Superintendent and would have helped to supply the District’s need for administrative staff. The Respondents have advanced plausible reasons to support their understanding that their votes were not only legal, but in the best interests of the school

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<sup>2</sup> As a demonstration of the harm that followed from these procedural errors, respondents note that the Commission found, at page 3 of its decision, that Mr. Udy made a call to Ms. Scheule, a member of the recall committee, on his cell phone during a public session of the Board’s meeting on May 15, 2002. Respondents contend, however, that they had no notice that Mr. Morrison intended to introduce such evidence and, therefore, Mr. Udy had no opportunity to rebut the allegation. “Of course,” respondents reason, “had the August 26<sup>th</sup> meeting proceeded as a probable cause hearing, there would be no harm in allowing the testimony.” (*Id.* at 5)

<sup>3</sup> Respondents detail the following errors: Mr. Udy worked in the District for 14 years, rather than 32, as stated by the Commission (*id.* at 3); with respect to Mr. Udy’s second motion, there are no facts on the record to support a finding that a “new position” was created, but, rather, the Assistant High School Principal position had existed for years and was merely vacant (*id.* at 5); the certification required for the Assistant Principal position is different from that required for Supervisor of Guidance and C.L., indeed, possessed the proper certification to be an Assistant Principal (*id.* at 5-6); and this record does not support a finding that Mr. Udy attempted to undermine the authority of the Superintendent when he made the two motions. (*Id.* at 6)

district. Under these circumstances, even a reprimand is a harsh result. (*Ibid.*)

Mr. Frazier submitted written comments which also addressed the Commission's findings and conclusions. With respect to the recommended sanctions, Mr. Frazier merely stated, "Mr. Udy is no more responsible then [*sic*] I am and should NOT be removed from the board. We all played an equal part and we should all be charged accordingly.\*\*\*" (emphasis in text) (Frazier's Comments at 2)

Mr. Morrison, the complainant in this matter, submitted written comments, as well.<sup>4</sup> He acknowledges that there are "some minor errors in the Decision," (Morrison Comments at 1), but asserts that the Commission has drawn appropriate conclusions and recommended appropriate sanctions. (*Ibid.*)

Initially, the Deputy Commissioner, to whom this matter has been delegated for review pursuant to *N.J.S.A.* 18A:4-33, emphasizes that pursuant to *N.J.S.A.* 18A:12-29(c), the Commission's determination as to violation of the Act or Code of Ethics *is not reviewable by him*. Only the School Ethics Commission may determine whether a violation of the School Ethics Act or Code of Ethics has occurred. The Commissioner's jurisdiction is limited to reviewing the sanction to be imposed following a finding of a violation by the School Ethics Commission. Therefore, this decision is restricted solely to a review of the recommended penalties for the respondents and its implementation and *cannot* reach in substance to the weaknesses in either procedure or content which were alleged by the respondents.

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<sup>4</sup> Although complainants do not have standing to participate in proceedings held in accordance with alleged School Ethics Act violations, see, *In the Matter of Frank Pannucci, Board of Education of the Township of Brick, Ocean County*, State Board Decision March 1, 2000, slip opinion at 6-9, this decision was issued as a Code of Ethics violation. As such, the pertinent regulations provide that a complainant "has the burden to prove factually a violation under the Code of Ethics," *N.J.A.C.* 6A:28-1.13(b), and therefore, may be fairly considered a participant in this matter.

Consequently, the Deputy Commissioner is constrained to accept the Commission's recommendations that censure is the appropriate penalty in this matter for Mr. Ewart and Mr. Frazier for violating *N.J.S.A.* 18A:12-24.1(a) and (f) of the Code of Ethics, and that removal is the appropriate penalty for Mr. Udy, for violating *N.J.S.A.* 18A:12-24.1(a), (c), (d) and (f) of the Code of Ethics. However, in light of comments raising the troubling allegation of procedural errors in these consolidated matters, the Deputy Commissioner determines *to stay implementation of the respective penalties ordered herein*, pending respondents' timely appeal to the State Board of Education. If no appeal is filed pursuant to *N.J.A.C.* 6A:4-1.1 *et seq*, the penalties ordered herein shall be effectuated immediately.

IT IS SO ORDERED.

DEPUTY COMMISSIONER OF EDUCATION

Date of Decision: November 10, 2003

Date of Mailing: November 10, 2003

*\*Note: Original document erroneously paginated. Corrected for publication on web.*