

EDU #1537-01 and 1601-01 (consolidated)
C # 268-01
SB # 37-01

IN THE MATTER OF THE TENURE HEARING :
OF EDWARD JACKUS, SCHOOL DISTRICT :
OF THE CITY OF ELIZABETH, UNION COUNTY, :
AND : STATE BOARD OF EDUCATION
IN THE MATTER OF THE TENURE HEARING : DECISION
OF SHARON GAINES, SCHOOL DISTRICT OF :
THE CITY OF ELIZABETH, UNION COUNTY. :

Decided by the Commissioner of Education, August 24, 2001

For the Respondent-Appellant Edward Jackus, LaCorte, Bundy, Varady &
Kinsella (Robert F. Varady, Esq., of Counsel)

For the Respondent-Appellant Sharon Gaines, Robert M. Schwartz, Esq.

For the Petitioner-Respondent, Murray, Murray & Corrigan (David F.
Corrigan, Esq. and Mary E. Hennessey, Esq., of Counsel)

The Board of Education of the City of Elizabeth (hereinafter "Board") certified tenure charges against Edward Jackus and Sharon Gaines (hereinafter "respondents"), tenured vice principals, alleging that they were guilty of unbecoming conduct by "aiding and abetting" the principal of their school in failing to hold two fire drills each month

during the 1989-99 and 1999-2000 school years as required by N.J.S.A. 18A:41-1 and by failing to notify the administration of such failure.¹

The two matters were consolidated in the Office of Administrative Law, and respondent Gaines filed a motion for summary decision. Respondent Jackus joined in that motion. Each of the respondents submitted a statement of material facts. The Board filed a brief in opposition to the motion, contending, inter alia, that there was a genuine dispute as to some of the facts asserted by the respondents.

On July 6, 2001, an Administrative Law Judge (“ALJ”) recommended granting the respondents’ motion and dismissing the charges. The ALJ stressed that N.J.S.A. 18A:41-1 and the district’s regulations placed the duty to conduct fire drills on the principal, and he concluded that any possible misconduct by the principal should not be thrust upon the respondents.

On August 24, 2001, the Commissioner of Education rejected the ALJ’s recommendation. The Commissioner found that the respondents, by virtue of their status as vice principals, had a duty to protect the health, safety and well-being of students and staff in their school. This duty, he concluded, gave rise to a duty on their part to act on and report the violations. The Commissioner observed that the

¹ N.J.S.A. 18A:41-1 provides, in pertinent part:

Every principal of a school of two or more rooms, or of a school of one room, when located above the first story of a building, shall have at least two fire drills each month within the school hours....

We note in that regard that the Board also filed tenure charges against the school’s principal, Jean Cina, based upon her failure to conduct fire drills and to file proper reports. The documents submitted by the parties include monthly reports filed with the Board by Cina during the 1998-99 and 1999-2000 school years in which she reported – falsely, according to the Board – that two fire drills were being conducted every month. The Board indicates that the tenure charges against Cina were settled when she decided to retire.

respondents had knowledge that the education laws, as well as the district's regulations, required that two fire drills be conducted each month, had been aware of the fact that such law and regulations were violated continuously for at least two years, and had failed to act on that knowledge. He concluded that having such knowledge and not acting on it in the face of the respondents' duty of care for student and staff safety constituted unbecoming conduct, even accepting arguendo that the respondents did not know if the principal was reporting such noncompliance.

The Commissioner therefore denied the respondents' motion for summary decision. In so doing, he also sustained the charge of unbecoming conduct against each of the respondents. However, finding that the record was not sufficiently developed to determine the appropriate penalty, he remanded this matter to the Office of Administrative Law for such further proceedings as were necessary to determine penalty.

The respondents filed the instant appeal to the State Board.

After a thorough review of the record, we reverse the decision of the Commissioner. Like the ALJ, we grant the respondents' motion for summary decision and dismiss the charges. As found by the ALJ:

In the situation sub judice, the duty to conduct the prescribed number of fire drills is placed squarely upon the principal by N.J.S.A. 18A:41-1. Similarly, the School District's Fire Drill Regulations, which incorporate N.J.S.A. 18A:41-1, place the responsibility squarely on the principal to file the "Emergency Drill Report" indicating compliance with State law requiring a minimum of two fire drills every month....

With respect to the respondents, N.J.S.A. 18A:41-1 does not refer in any way to vice principals. Similarly, the [district's] Fire Drill Regulations do not place any specific

responsibility on vice principals. In the job description for vice principal, there is no mention of fire drills or a responsibility to report acts or omissions of the principal. Under the circumstances, the vice principals were not under a specific duty to conduct the fire drills or to report the principal's failure to do so. Since the vice principals were not under a duty to act, the failure to act would not rise to the level of providing substantial assistance or encouragement. It follows that respondents did not aid or abet the principal in this case.

The final question is whether in the absence of a specific duty to act the vice principals engaged in conduct unbecoming by failing to uphold an implicit standard of good behavior. One general concern is that a duty of this nature would place a burden on subordinates to report questionable acts or omissions of superiors or risk facing tenure charges....

In this situation, the duty to conduct fire drills and to file reports was clearly placed on the principal. Even by the most general standards of good conduct, the inaction of the vice principals would not likely affect morale or efficiency by destroying public respect for or confidence in school operations or services. Under the circumstances, any possible misconduct by the principal should not be thrust upon the vice principals.

Initial Decision, slip op. at 10-11.

As stressed by the ALJ, N.J.S.A. 18A:41-1 and the district's regulations specifically charge the principal of a school with the responsibility for conducting fire drills, and we fully agree that the principal's apparent failure to discharge her responsibilities in this context cannot provide the basis for tenure charges against the respondent vice principals.² Notwithstanding any general responsibility that the respondents might have had for the health and safety of students, we conclude that tenure charges cannot be sustained against them in this instance for allegedly "aiding

² We note that the Board does not allege that the principal had delegated her responsibility for conducting fire drills to the respondents at any time during the period at issue herein.

and abetting” the principal in her apparent dereliction of her statutory duty or in their failure to report the principal’s noncompliance.

We therefore reverse the Commissioner’s decision and grant the respondents’ motion for summary decision.

Orlando Edreira recused himself.

Attorney exceptions are noted.

April 3, 2002

Date of mailing _____