

THOMAS LICCIARDI, :
 :
 PETITIONER, :
 : COMMISSIONER OF EDUCATION
 V. :
 : DECISION
 BOARD OF EDUCATION OF THE :
 TOWNSHIP OF MOUNT OLIVE, :
 MORRIS COUNTY, :
 :
 RESPONDENT. :

SYNOPSIS

Pro se petitioner challenged the Board's demand for legal fees, the appropriateness and proportionate amount of these fees, and the propriety of the Board's threat to withhold his diploma unless payment for the legal fees was made. Petitioner was one of several students disciplined in the aftermath of vandalism incidents which targeted the Mount Olive Bus Transportation Garage in efforts to delay or cancel school the following day. The Board sought the authority of the Commissioner to collect the reimbursement of attorney fees.

The ALJ identified the issue in this matter to be whether the Board can collect attorney fees incurred pursuing disciplinary action against a student arising out of acts of vandalism and can condition the receipt of a diploma on such payments, and found that: no statute authorizes the Commissioner to award counsel fees to a school district arising out of its pursuit of disciplinary action against a student; *N.J.S.A. 18A:37-3* does not provide authority to the Commissioner to grant attorney fees; and a Board cannot withhold or threaten to withhold diplomas in order to collect discipline-related counsel fees. The ALJ denied the Board's request for an order directing petitioner to reimburse it in the amount of \$1,196, and ordered that the Board be enjoined from withholding or threatening to withhold petitioner's diploma or transcript unless such payment is made.

Upon a full and independent review, the Commissioner adopted the Initial Decision as the final decision in this matter.

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.

December 5, 2008

OAL DKT. NO. EDU 7232-08
AGENCY DKT. NO. 146-5/08

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The record of this matter and the Initial Decision of the Office of Administrative Law (OAL) have been reviewed, as have exceptions filed by the Board of Education (Board) pursuant to *N.J.A.C. 1:1-18.4* and *N.J.A.C. 1:1-18.8*, to which petitioner did not reply.

In its exceptions, the Board contends that the Administrative Law Judge (ALJ) erred in ordering the Board to grant petitioner his high school diploma, since petitioner did not specifically challenge the Board's withholding of such diploma and the ALJ made no finding that the Board's action was arbitrary and capricious, as is required in order for it to be overturned by the Commissioner on appeal. (Board's Exceptions at 2-5) The Board further contends that the ALJ's analysis with respect to attorney's fees is inapplicable to the matter at issue, which concerns the cost of an underlying disciplinary appeal, not the cost of the present litigation. According to the Board, *N.J.S.A. 18A:11-1(d)* – which authorizes it to do all things necessary for the proper conduct of its schools – fully entitles it to charge a student for fees which the student caused to be incurred, and the Commissioner is unquestionably empowered to order recovery of operational costs associated with a board's "handling of matters related to the proper administration of its District" – including legal fees, which are expressly included within the

“administrative costs” category of the Department’s Comparative Spending Guide, Indicator 8, referenced in *N.J.A.C. 6A:23-1.2*. (*Ibid.* at 5-8, quotation at 6)

Upon review, the Commissioner finds that the Initial Decision fully and fairly addresses the Board’s arguments as presented at the OAL and reiterated on exception, and is unpersuaded by the Board’s objections as summarized above. While the Board may be literally accurate in its characterization of petitioner’s written pleadings and the findings of the ALJ, there can be no question but that the central issue ultimately litigated in this matter was the Board’s conditioning of petitioner’s receipt of a high school diploma on his payment of legal fees associated with his disciplinary proceedings; moreover, while the ALJ may not have specifically held the Board’s action to be “arbitrary and capricious,” he clearly did find it – in a discussion that carefully distinguishes such fees from “attorney fees” in the usual sense – to be without lawful basis and, hence, unsustainable.

Accordingly, for the reasons expressed therein, the Initial Decision of the OAL – denying the Board’s request for reimbursement from petitioner of \$1,196 in legal costs and enjoining the Board from withholding or threatening to withhold petitioner’s diploma or transcripts until such reimbursement is made – is adopted as the final decision in this matter.

IT IS SO ORDERED.*

COMMISSIONER OF EDUCATION

Date of Decision: December 5, 2008

Date of Mailing: December 8, 2008

* This decision may be appealed to the Appellate Division of the Superior Court pursuant to *P.L. 2008, c. 36*.