

#185-11 (OAL Decision: Not yet available online)

MAUREEN CASTRIOTTA,	:	
	:	
PETITIONER,	:	
	:	COMMISSIONER OF EDUCATION
V.	:	
	:	DECISION
BOARD OF EDUCATION OF THE	:	
TOWNSHIP OF ROXBURY,	:	
MORRIS COUNTY,	:	
	:	
RESPONDENT.	:	
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SYNOPSIS

Petitioner, a member of the Roxbury Township Board of Education, alleged that the Board acted improperly and beyond the bounds of its authority when it passed a resolution censuring her for unethical conduct in May 2010. She contended that a member of a local board of education can only be censured or disciplined for an ethical violation through the filing of a formal complaint with the School Ethics Commission (SEC), and sought indemnification pursuant to *N.J.S.A.* 18A:12-20 for legal expenses incurred in challenging the Board’s action. The Board asserted, *inter alia*, that the action to censure one of its members was within its statutory authority under *N.J.S.A.* 18A:11-1, and was reasonable and consistent with the law. The parties filed cross motions for summary decision.

The ALJ found, *inter alia*, that: there are no material facts in dispute, and the matter is ripe for summary decision; the Board was required to utilize the statutory mechanisms set forth at *N.J.S.A.* 18A:12-29 in order to censure one of its members for misconduct that fell under the authority of *N.J.S.A.* 18A:12-24.1, the Code of Ethics for School Board Members; the Board’s obligation to discipline the petitioner in accordance with statutory procedures cannot be avoided by excluding a reference to the Code of Ethics in its censure resolution; the actions of the Board deprived the petitioner of due process; and the Board’s contention that the Commissioner lacks jurisdiction in this matter is without merit. Accordingly, the ALJ concluded that the Board’s resolution censuring petitioner must be vacated. As to petitioner’s claim to indemnification, the ALJ concluded indemnification is not warranted, as no civil or administrative action or other legal proceeding has been brought against her.

Upon independent review and consideration, the Commissioner adopted the recommended decision of the OAL with modification.

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.

May 18, 2011

OAL DKT. NO. EDU 9217-10
AGENCY DKT. NO. 139-7/10

MAUREEN CASTRIOTTA,	:	
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PETITIONER,	:	
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V.	:	COMMISSIONER OF EDUCATION
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_____	:	

The record of this matter and the Initial Decision of the Office of Administrative Law (OAL) have been reviewed. Primary and reply exceptions of both petitioner and the Board – filed in accordance with the requirements of *N.J.A.C. 1:1-18.4* – were fully considered by the Commissioner in reaching his determination herein.

The Board excepts to four of the Administrative Law Judge’s (ALJ) conclusions of law, specifically those which determined 1) “Castriotta has demonstrated that the Board has exceeded its authority in voting to censure her” (Initial Decision at 9); 2) “[T]he Board’s obligation to discipline Castriotta in accordance with statutory procedures cannot be avoided by simply excluding a reference to the Code of Ethics in its censure resolution (Initial Decision at 11); 3) “[T]he actions of the Board deprived Castriotta of due process,” (Initial Decision at 14); and 4) “[T]he Board’s contention that [the Commissioner of Education] lacked jurisdiction is without merit.” (Initial Decision at 14) (Board’s Exceptions at 2)

With respect to the first and second of these legal conclusions – which the Board finds to be interrelated – it cites *Crystal v. Bd. of Educ. Of the Twp. Of Barnegat*, Commissioner’s Decision No. 29-00, decided January 18, 2000, for the proposition that it is a long-established principle that a board of education has the right to censure a member. While recognizing

that *Crystal, supra*, upheld this right, the ALJ – it charges – “breaks new ground” by concluding that because *Crystal, supra*, pre-dated the Code of Ethics for School Board Members, such is no longer the case. (Board’s Exceptions at 2) In so concluding, the Board proffers, the ALJ “effectively declares the jurisdiction of the School Ethics Commission (the “SEC”) to be preemptive and exclusive and also deprives all local boards of the right to censure a member – even though a Board may not file a complaint with the SEC.”¹ In support of her first and second legal conclusions, the Board advances, the ALJ places great reliance on the Legislature’s language in the findings and declarations provision of the Ethics Act, specifically:

school board members and local school administrators should have the benefit of specific standards to guide their conduct and of some disciplinary mechanism to ensure the uniform maintenance of these standards among them.
[N.J.S.A. 18A:12-22(b)]

Stressing the term “uniform,” the ALJ reaches the conclusion that “the clear intent of the Act was to have all concerns about board member ethics directed to the School Ethics Commission.” (Initial Decision at 10) She further references the Act’s enforcement procedures and determines that only the SEC, and not the Board, had authority to discipline petitioner for her alleged misconduct. (Board’s Exceptions at 3-4) The position that the SEC preempts the right of the Board to censure one of its members, the Board argues, is not now – nor has it ever been – the law. Evidence of this can be found, it advances, in *Sea Isle City Board of Education v. Kennedy*, Commissioner’s Decision No. 235-05, decided June 30, 2005, *aff’d* State Board, January 4, 2006, *aff’d* 393 N.J. Super. 93 (App. Div. 2007), *aff’d as modified* 196 N.J. 1 (2008), where the Commissioner established the guiding principle “that rights existing prior to the Act still remain unless expressly revoked.” (Board’s Exceptions at 4) The ALJ’s rejection of this underlying principle because there was no

¹ The Board charges that the ALJ’s decision mistakenly states that the Board could authorize its Board President to file a complaint on its behalf. The Board points out that applicable regulations restrict the ability to file an ethics complaint to a “person,” which is defined as “a human being and does not include boards of education, labor organizations or school districts[,]” and the Board’s use of a designee to circumvent these regulations, as contemplated by the ALJ, is not within the intent of the regulations. (*Ibid.*)

other school law which was applicable to disciplinary action for the type of behavior involved in this case is misplaced, it maintains, because “if rules of statutory construction establish that each and every word, clause and provision contained in a statute is purposeful, it necessarily follows that a statute’s silence on a specific issue is also purposeful.” (*Ibid.*) Finally, with respect to these two legal conclusions, the Board maintains that it did not discipline petitioner. “Rather, ...the censure resolution was nothing more than a public expression of dissatisfaction by a majority of the Board’s membership and carries no other sanctions with it. Unlike the SEC’s censure mechanism, the Board’s censure is not a disciplinary action.” (*Ibid.*) The Board, therefore urges that these first two legal conclusions of the ALJ be rejected.

As to the ALJ’s third legal conclusion, *i.e.*, that the Board deprived petitioner of her entitlement to due process, this, it avers, is a result of her prior two incorrect conclusions. Accepting, *arguendo*, that the Board’s prior exception is valid, it presents its arguments advanced below – which were reviewed in the Initial Decision – to support its claim that petitioner was provided all of the due process to which she was entitled. (Board’s Exceptions at 5-6)

In conclusion, with respect to the fourth of the ALJ’s legal conclusions, the Board, similarly, replicates its arguments advanced below. Specifically, it again proposes that the Commissioner lacks jurisdiction over this matter, as petitioner’s claims predominantly involve charges of constitutional violations of her due process and free speech rights rather than violations of school law. (*Id.* at 6-7)

In reply, petitioner charges that the Board continues to support its improper censure of petitioner with citation to *Crystal, supra*, and *Sea Isle City, supra*. She claims that neither of these cases support the proposition that local boards retain jurisdiction to sanction one of their members for alleged violations of the School Ethics Act. By way of example, she argues, not only does *Crystal, supra*, predate the enactment of the Code of Ethics for School Board Members, but that particular

case involved “explicitly stated violations of the local board’s bylaws only...” (Petitioner’s Exceptions at 1-2) Moreover, petitioner observes:

[r]espondent’s actions in this case reflect the very injustices and potential abuses the State Legislature sought to prevent when it enacted the Ethics Code and gave sole jurisdiction over its enforcement to the School Ethics Commission and Commissioner....The Legislature’s expressed intent in creating the Ethics Commission and vesting it with sole jurisdiction was to “...ensure and preserve public confidence...” thorough “uniform maintenance of standards.”...By enacting the Ethics Code and granting the Commission and Commissioner jurisdiction over its enforcement the Legislature ensured local boards could focus on their school districts rather than expending time adjudicating ethics allegations. Perhaps more importantly, the Legislature ensured the public confidence would be protected by having a well versed impartial body preside over alleged ethics violations in a system replete with due process protections. ...It also ensured free and open political discourse would not be hindered by majority members of local boards who might have design to use the formal governmental authority of the Board to silence political adversaries by publically [sic] damaging their reputation with humiliating and biased public censures. Consistent with their intended design the Legislature ensured ethics standards would be enforced uniformly by one adjudicative agency rather than haphazardly by local boards across the State whose individual members may not be well versed in the Ethics Code or interpretive legal decisions concerning the Code. (*Id.* at 2-3)

Here, petitioner argues, the Board takes the position that “its intentional avoidance of the use of the word ethics in its carefully crafted censure resolution holds it outside the jurisdictional mandate of the Ethics Commission.” However, she posits, as noted by the Supreme Court in *Board of Education of the Boro of Union Beach v. N.J. Educ. Ass’n.*, 53 N.J. 29:

[t]he substance of a situation and not its shape must control. A doctrine designed to protect the public interest is equal to any demand upon it. It does not yield to guise or ingenuity (At 40-41) (Petitioner’s Exceptions at 3)

Additionally, petitioner avers, the Board fails to address and consider the fact that in *DeLuna v. Bertram*, C31-06 (April 27, 2007) the School Ethics Commission specifically cautioned local school boards against taking action to discipline one of its members for violation of the Ethics Code, stating:

The Commission is concerned that the Board took it upon themselves to determine that a fellow Board member had violated the Code of Ethics for School Board Members set forth at *N.J.S.A.* 18A:12-24.1, and then discipline[d] that board member based on its determination. While boards of education have the right to enforce their

own policies, the Commission has sole authority to determine if the Code of Ethics for School Board Members, *N.J.S.A. 18A:12-24.1*, has been violated. However, even the Commission does not have the authority to impose discipline on a board member who has violated the Code of Ethics for School Board Members. That jurisdiction lies with the Commissioner of Education to whom the Commission makes a recommendation regarding the discipline of a school board member. The Commission cautions the Board that, in the future, if the Board suspects that the Code of Ethics for School Board Members has been violated, then a complaint should be filed with the Commission and *the Board should not make its own determination that a violation has incurred [sic] and impose discipline*. At p. 9 (emphasis added) (Petitioner's Exceptions at 4)

Petitioner urges that clearly the sole authority to discipline her for the allegations contained in the Board's censure resolution, which plainly sound in alleged violations of the School Ethics Code, lies solely with the Commissioner after reviewing the recommendation of the School Ethics Commission – who first conducts a full and fair hearing granting the accused a full measure of due process protections. Therefore, she maintains, the Board here was without power to censure petitioner and such censure should be vacated. (*Id.* at 5)

Turning to petitioner's primary exceptions – she excepts solely to the ALJ's dismissal of her claims for indemnification and legal fees. In so asserting she argues extensively, as she did below, that the censure hearing held by the Board qualifies as "other legal proceeding" within the intentment of *N.J.S.A. 18A:12-20*, justifying indemnification and counsel fees. As it is determined that the indemnification issue was fully considered, addressed and correctly resolved by the ALJ in her decision, further elaboration on this issue will not be presented here.

Upon comprehensive review and consideration, the Commissioner determines to adopt the recommended decision of the ALJ as modified below.

Initially, the Commissioner concurs with the ALJ that review and adjudication of allegations of Code of Ethics for School Board Members violations is solely within the jurisdictional purview of the School Ethics Commission. As such, a Board which wishes to have one of its members disciplined for misconduct falling within the ambit of *N.J.S.A. 18A:12-24.1* is required to

utilize the statutory mechanisms set forth in *N.J.S.A. 18A:12-29*.² In this matter, it is undeniable that the impetus for the Board’s action censuring petitioner was the letter received by its president from Superintendent of Schools Rossi charging that petitioner had “clearly and undeniably” violated the statutory Code of Ethics for School Board members, citing to numerous specific provisions of this Code which she is alleged to have violated, and requesting the Board’s quick condemnation of her conduct, which the Board promptly acted on. Irrespective of the fact that the resolution censuring petitioner assiduously excluded any reference to the Code of Ethics in its wording, it is incontrovertible that the conduct petitioner was censured for would be violative of the Code and, therefore, adjudicable only by the School Ethics Commission. Consequently, the Commissioner is in full accord with the ALJ’s conclusion that the Board exceeded its authority by censuring petitioner at a public meeting for perceived Ethics Code violations and, therefore, this action was *ultra vires* and must be vacated.

Next, the Commissioner finds – given that the Board exceeded its authority in taking it upon itself to adjudicate and impose discipline against petitioner for perceived Ethics Code violations – that the extent of the due process it provided her in this regard, although recognized as wholly deficient in terms of that which must be accorded an individual charged with Ethics Code violations, is irrelevant in this case.

This said, the Commissioner is compelled to clarify that the Code of Ethics for School Board Members does not operate to deprive a Board, under appropriate circumstances, of the ability to discipline one of its members, nor is *Crystal*,³ *supra* – supporting the Board’s authority in

² The Board’s exception argument that it cannot initiate a complaint before the School Ethics Commission because it is not a “person” as required by that body’s applicable regulations is disingenuous at best. It is without question that a Board could authorize its Superintendent of Schools, who fully satisfies the regulatory requirement, to file a complaint with the Commission. Similarly rejected as wholly meritless is the Board’s contention that its censure of petitioner was not “discipline” but rather merely “an expression of its dissatisfaction with her conduct.” Such a claim, the Commissioner concludes, is obviously a distinction without a difference.

³ The petitioner in this case was censured by the Board for a violation of a clearly articulated Board Policy which provided:

this regard – preempted by the Code. Specifically, *N.J.S.A.* 18A:11-1 specifically provides local boards of education with certain mandatory powers and duties. These powers and duties include the following:

- a. Adopt an official seal;
- b. Enforce the rules of the state board;
- c. *Make, amend and repeal rules, not inconsistent with this title or with the rules of the state board, for its own government* and the transaction of its business and for the government and management of the public schools and public school property of the district and for the employment, regulation of conduct and discharge of its employees, subject, where applicable, to the provisions of Title 11, Civil Service, of the Revised statutes; and
- d. Perform all acts and do all things, consistent with law and the rules of the state board, necessary for the lawful and proper conduct, equipment and maintenance of the public schools of the district. (emphasis added)

Pursuant to this statutory provision, the Commissioner finds and concludes that the Board is empowered to discipline one of its members who has violated a clearly constructed and adopted Board policy governing the conduct of its members. However, it is without question that such policy cannot mirror the conduct specifically prohibited by, and governed by, the Ethics Code.

Turning to the Board’s challenge to the Commissioner’s jurisdiction to adjudicate this matter, the crux of this case is a determination as to whether the Board exceeded its statutory authority with respect to the action taken against petitioner. Such an issue is unquestionably properly

No Board member will act to notify or release information concerning the business of the Board until and unless they have informed every other Board member no less than five days before such dissemination. Telephone notice by either the individual member or the Board office acting upon their request is acceptable.

Any allegation that an individual governed by this policy has violated this policy will result in the issue being placed on the agenda of the next scheduled Board meeting for discussion. It will then be left to the Board to evaluate the allegation(s) and recommend any possible remedial or disciplinary action(s) allowed by the Board’s rules of procedures or, absent same, Robert’s Rules of Order.

The Board recognizes, of course, any Board member’s First Amendment rights and it is not the intent of this policy to interfere with same. Accordingly, the Board deems a member exempt from the provisions of this policy providing they issue a clear disclaimer to any media or other informational outlet that they are speaking as a private citizen and they do [not] intend their remarks to represent any position, opinion or will of the Board and that the information, data, etc., they disseminate is not privileged, executive session material that has not been declassified. (*Crystal, supra*, at 4-5)

before the Commissioner, and the Commissioner agrees with the ALJ that the Board's arguments to the contrary are without merit.

Finally, with respect to petitioner's request for indemnification and legal fees, the Commissioner is compelled to agree with the ALJ – for the reasons detailed on pages 15-17 of her decision – that there is no legal authority which would authorize such an award in this matter.

Accordingly, the recommended decision of the OAL is adopted as modified above. The Board's May 24, 2010 resolution censuring petitioner is hereby VACATED.

IT IS SO ORDERED.⁴

ACTING COMMISSIONER OF EDUCATION

Date of Decision: May 18, 2011

Date of Mailing: May 18, 2011

⁴ This decision may be appealed to the Appellate Division of the Superior Court pursuant to *P.L. 2008, c. 36* (*N.J.S.A. 18A:6-9.1*).