

#108-13 (OAL Decision: Not yet available online)

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

Petitioner initially filed an appeal before the Commissioner in July 2010, challenging the action of the respondent Board in publicly censuring her and seeking indemnification for legal fees and expenses. An Initial Decision issued by the OAL in April 2011 determined that the Board had acted improperly in censuring the petitioner, but that she was not entitled to statutory indemnification. Following adoption by the Commissioner in May 2011, the matter was appealed to the Appellate Division. The court’s decision modified the Commissioner’s decision and held that the petitioner is entitled to indemnification for her legal fees and costs under *N.J.S.A. 18A:12-20*. The Appellate Division remanded the matter for determination of the counsel fees to which petitioner is entitled, with a directive that the amount of the legal fees must be based on the criteria set forth in *Walker v. Giuffre*, 209 *N.J.* 124 (2012) and *Rendine v. Pantzer*, 141 *N.J.* 292 (1995).

The ALJ found, *inter alia*, that: pursuant to the decision in *Walker, supra*, the fee award in this matter must start with a calculation of the “lodestar,” which is derived by multiplying the number of hours reasonably expended on the litigation by a reasonable hourly rate; petitioner’s attorneys reasonably spent 429.9 hours on the within matter; the appropriate approach to utilize in determining the hourly fee is set forth in *Kieffer v. High Point Regional High School*, A-1737-09T2 (App. Div. 2010), wherein the allowed hourly rate was reduced to the midpoint between what defendants paid their attorney and what plaintiff’s counsel charged per hour, or \$205 per hour in this case; using this formula, the fee to which petitioner’s attorneys are entitled is \$88,129.50; any enhancement of the lodestar is inappropriate under the unique circumstances of the case; and petitioner’s attorneys are not entitled to reimbursement for interest on unpaid expenses. The ALJ concluded that petitioner is entitled to counsel fees in the amount of \$88,129.50 plus expenses in the amount of \$2,102.67; accordingly, the ALJ ordered the Board to defray petitioner’s legal fees pursuant to *N.J.S.A. 18A:12-20* in the sum of \$90,232.17.

Upon comprehensive review of the record, the Assistant Commissioner – to whom this matter was delegated pursuant to *N.J.S.A. 18A:4-34* – concurred that petitioner’s attorneys reasonably expended 429.9 hours in the litigation of the case and are not entitled to a fee enhancement or interest, but found that the hourly rate of \$250 was supported as reasonable by the evidence in the record and the ALJ’s reduction of the hourly rate from \$250 to \$205 was therefore not appropriate. Accordingly, the Initial Decision of the OAL was adopted as modified with respect to the hourly rate for services rendered by petitioner’s attorneys; the petitioner is entitled to legal fees in the amount of \$107,475.00, plus \$2,102.67 in expenses.

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.

March 21, 2013

OAL DKT. NO. EDU 13394-12  
(EDU 9217-10 ON REMAND)  
AGENCY DKT. NO. 139-7/10

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

The record of this matter and the Initial Decision of the Office of Administrative Law (OAL) have been reviewed, as have the exceptions filed pursuant to *N.J.A.C. 1:1-18.4* by the petitioner and the Board of Education, along with the respective replies thereto. This matter was remanded from the Appellate Division, and is limited to a determination on the award of counsel fees stemming from the Board's censure action to which the petitioner is entitled. The Administrative Law Judge (ALJ) determined that the petitioner's attorney provided adequate proof that 429.9 hours were spent on the litigation of this matter; however, in calculating the recoverable fees, the ALJ reduced the hourly rate charged by petitioner's attorney from \$250 to \$205. Additionally, the ALJ determined that the petitioner was not entitled to any fee enhancements or interest.

The petitioner only takes exception to the portions of the ALJ's decision that reduced the legal fee of Hassing & DeFilippis to \$205 an hour, and denied a contingency fee enhancement and/or interest on the unpaid fees and expenses for the litigation. In her exceptions, the petitioner maintains that the ALJ erred in reducing the legal rate of Hassing &

DeFilippis from \$250 per hour to \$205 per hour because there is no evidence in the record that the fee was unreasonable. The petitioner argues that the hourly rate charged by the Board's attorney is irrelevant because board of education attorneys charge a lower rate since they are serving a public entity on a long-term contract, with guaranteed long-term and substantial billing. In contrast, Hassing & DeFilippis is retained on a case-by-case basis by a private client with no guarantee of long-term billing. Moreover, the petitioner stresses that she submitted numerous undisputed certifications stating that \$250 per hour was a reasonable hourly rate for a firm practicing in Morris County and serving in this area of the law.

In her exceptions, the petitioner also argues that the ALJ incorrectly refused to apply a fee enhancement pursuant to *Walker v. Giuffre*, 209 N.J. 124 (2012) and *Rendine v. Pantzer*, 141 N.J. 292 (1995). The petitioner maintains that a fee enhancement at the highest end of the spectrum is required in this case because: Hassing & DeFilippis had no way to mitigate against the risk of non-payment and no possibility for payment without an award of fees; the relief sought was equitable in nature; and the decision was of broad public import. The petitioner further argues that if the award is not entitled to a fee enhancement because it is considered a straight indemnification case, then Hassing & Defilippis is entitled to interest for almost three years of unpaid fees and expenses.<sup>1</sup>

In its exceptions, the Board emphasized its position below that the legal fees must be analyzed in the context of the fiduciary obligation of all boards of education to take all actions necessary to control legal costs. The Board maintains that it should not be unduly burdened with petitioner's legal fees when the underlying issue generating this matter was based on allegedly

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<sup>1</sup> In her reply exceptions, the petitioner repeated the same arguments made below and in her original exceptions with respect to her fee application. Additionally, the petitioner addressed various arguments relating to the scope of the petitioner's conduct in the underlying censure matter that is not the subject of this case, which is limited to a determination of reasonable legal fees.

improper behavior on the part of the petitioner. The Board also takes exception to the ALJ's assertion that the Board "concedes that the conduct which was the subject of its censure resolution arose out of the performance of Castriotta's duties as a Board member" because no record has been created in this case for such a determination. Finally, in its reply exceptions the Board reiterated its position below with respect to the hourly rate, fee enhancement and interest.

Upon a comprehensive review of the record in this matter, the Commissioner<sup>2</sup> concurs with the ALJ's determination that the firm of Hassing and Defilippis reasonably expended 429.9 hours on the litigation of the petitioner's case. The Commissioner further finds, however, that it was not appropriate for the ALJ to reduce the \$250 hourly rate of Hassing and Defilippis in the calculation of the fee application. Finally, the Commissioner is in accord with the ALJ's determination – for the reasons stated in the Initial Decision – that the petitioner is not entitled to a fee enhancement or interest.

In analyzing a fee application, it is necessary to begin with the calculation of the "lodestar" – which is the number of hours reasonably expended on the litigation multiplied by a reasonable hourly rate. *Rendine, supra*, 141 *N.J.* at 324. Once the lodestar fee is carefully established, the court may then determine if the fee should be increased to reflect a contingency enhancement. *Id.* at 337-338. In order to complete the calculation, the reasonable hourly rate must be evaluated according to prevailing market rates. Therefore the court must compare the hourly rate sought to those of attorneys in the community with "comparable skill, experience, and reputation." *Id.* at 337 (citations omitted). Although the determination "need not be unnecessarily complex or protracted," the court must also ensure that the hourly rates are "fair, realistic, and accurate." *Ibid.*

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<sup>2</sup> This matter has been delegated to the undersigned Assistant Commissioner, pursuant to *N.J.S.A.* 18A:4-34.

In this case, the ALJ reduced the \$250 hourly rate charged by Hassing and Defilippis to \$205 for purposes of completing the lodestar calculation because she determined it was necessary to split the difference between the \$160 an hour charged by the Board attorney and the \$250 an hour charged by petitioner's attorney. In the Initial Decision the ALJ cites to the unpublished Appellate Division decision of *Kieffer v. High Point Regional High School*, A-1737-09T2 (App. Div. 2010)<sup>3</sup> to support her conclusion that splitting the difference between the hourly rates was appropriate. In *Kieffer, supra*, the Appellate Division affirmed the trial court's decision to adjust the hourly rate sought in a similar manner, but the Court expressly noted that the circumstances were different from other cases because there were no certifications from other attorneys who litigated similar cases to support the position that the hourly rate was reasonable. *Id.* at 6. In the case at bar, the petitioner submitted undisputed affidavits from four other attorneys who practice law in Morris County attesting to the fact that the \$250 hourly rate charged by Hassing and Difillipis was reasonable. In the absence of any evidence suggesting that \$250 an hour for a similarly situated attorney was unreasonable, the ALJ was not authorized to arbitrarily split the difference between the hourly rate charged by the Board's attorney and the rate sought by Hassing and Difillipis.

Additionally, the hourly rate charged by the Board's attorney is not dispositive in determining whether Hassing and Difillipis' hourly rate was reasonable. As the petitioner emphasizes, board of education attorneys bill differently than private attorneys because they represent a public entity and benefit from a long-term contract and consistent billing. There was no evidence that the hourly rate of Hassing and Difillipis was unreasonable; it was only

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<sup>3</sup> The unpublished decision in *Kieffer v. High Point Regional High School*, A-1737-09T2 (App. Div. 2010) was attached as Exhibit G to the petitioner's submission at the OAL.

established that the Board attorney's hourly rate was lower. Therefore, the petitioner's fee application must be calculated by utilizing \$250 as the reasonable hourly rate.

Accordingly, the Initial Decision of the OAL is adopted as modified with respect to the hourly rate for the services rendered by Hassing and Difillipis. The petitioner is entitled to legal fees in the amount of \$107,475.00 plus \$2,102.67 in expenses.<sup>4</sup>

IT IS SO ORDERED.<sup>5</sup>

ASSISTANT COMMISSIONER OF EDUCATION

Date of Decision: March 21, 2013

Date of Mailing: March 21, 2013

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<sup>4</sup> Despite the fact that the petitioner attached updated affidavits to her exceptions seeking additional fees for work completed by Hassing and Difillipis after the Initial Decision was issued, the petitioner is not entitled to any additional fees. This final decision is based upon the evidence submitted at the OAL.

<sup>5</sup> 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*).