

#163-13 (OAL Decision: Not yet available online)

DAVID VANDEN HUEVEL AND THE	:	
HORACE MANN INSURANCE COMPANY,	:	
	:	COMMISSIONER OF EDUCATION
PETITIONERS,	:	
	:	
V.	:	DECISION
	:	
BOARD OF EDUCATION OF THE TOWN	:	
OF HACKETTSTOWN, WARREN COUNTY,	:	
	:	
RESPONDENT.	:	

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SYNOPSIS

Pursuant to *N.J.S.A.* 18A:16-6, the petitioner – on September 6, 2012 – requested reimbursement from the respondent Board for costs and fees expended in the defense and settlement of a civil lawsuit alleging that Vanden Huevel engaged in wrongful conduct, *ie*: making sexual comments and advances to a female student, while he was employed as an art teacher by the respondent Board. The Board contended that the petition should be dismissed because the acts on which the lawsuit against Vanden Huevel was predicated did not arise out of and in the course of performance of his employment duties. The parties filed cross motions for summary decision.

The ALJ found, *inter alia*, that: there are no material facts at issue here and the matter is ripe for summary decision; the single issue in this proceeding is whether petitioners are entitled to indemnification from the Board pursuant to *N.J.S.A.* 18A:16-6; although the civil case was ultimately settled with no admission of wrongdoing, the allegations against Vanden Huevel were adjudicated in prior separate proceedings in which the State Board of Examiners successfully revoked Vanden Huevel’s teaching certificates based on allegations by several female students that he made sexually inappropriate comments to them while serving as an art teacher in respondent’s school district; conduct that has been adjudicated as unbecoming does not qualify as conduct which arises out of a school employee’s duties; and indemnification only applies when an employee is sued individually for an action taken in furtherance of his prescribed duties. The ALJ concluded that petitioner Vanden Huevel was sued for personal and unauthorized actions that were sufficient to constitute unbecoming conduct, and accordingly petitioners are not entitled to indemnification under even the broadest determination of performance of duties. The ALJ granted the respondent’s motion for summary decision and dismissed the petition.

Upon independent review of the record, the Commissioner concurred with the ALJ’s findings and adopted the Initial Decision of the OAL 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.
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May 2, 2013

OAL DKT. NO. EDU 13636-12  
AGENCY DKT. NO. 252-9/12

DAVID VANDEN HUEVEL AND THE	:	
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The record of this matter and the Initial Decision of the Office of Administrative Law (OAL) have been reviewed. The parties did not file exceptions to the Initial Decision.

This matter arises out of a claim by petitioners David Vanden Huevel and the Horace Mann Insurance Company for indemnification – pursuant to *N.J.S.A. 18A:16-6* – of settlement and defense costs of Vanden Huevel in federal and state lawsuits brought against him by former student Tessa Graham. Such lawsuits charged that Vanden Huevel engaged in inappropriate behavior by making improper sexual comments to Ms. Graham while he was an art teacher and she was a student at Hackettstown High School. *N.J.S.A. 18A:16-6* – in pertinent part – provides:

Whenever any civil or administrative action...has been or shall be brought against any person holding any office, position or employment under the jurisdiction of any board of education...*for any act or omission arising out of and in the course of the performance of any duties of such office, position, employment...*the board shall defray all costs of defending such action, including reasonable counsel fees and expenses...and shall save harmless and protect such person from any financial loss resulting therefrom...(emphasis added)

Upon his full consideration, the Commissioner agrees with the Administrative Law Judge (ALJ) that summary decision is appropriately granted to the Board as he concurs with the ALJ – for the reasons fully presented in her Initial Decision – that the Board is not obligated to indemnify petitioners for Vanden Huevel’s settlement and defense costs because his actions did not arise out of, and were not in the course of the performance of, his duties as a high school art teacher and, therefore, he does not satisfy the statutory requisite of *N.J.S.A. 18A:16-6*.

Accordingly the recommended decision of the OAL is adopted as the final decision in this matter and the instant petition of appeal is hereby dismissed.

IT IS SO ORDERED.\*

COMMISSIONER OF EDUCATION

Date of Decision: May 2, 2013

Date of Mailing: May 6, 2013

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\* 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*).