

New Jersey Commissioner of Education
Final Decision

Archange Antoine,

Petitioner,

v.

Board of Education of the Borough of Roselle,
Union County,

Respondent.

Synopsis

Petitioner contested his removal as a member of the respondent Roselle Board of Education (the Board) based upon his alleged failure to attend three or more consecutive Board meetings. Petitioner contended that his removal was improper and in violation of the Board's own policy, as he had missed only one regular meeting, and argued that the Board's decision to remove him was arbitrary, capricious and unreasonable. The parties filed cross motions for summary decision.

The ALJ found, *inter alia*, that: there is no genuine issue as to any material fact here, and the matter is ripe for summary decision; it is undisputed that petitioner failed to attend four consecutive meetings of the Board, though petitioner argued that he only missed one regular meeting that appeared on the Board's "Regular Public Meeting" schedule; *N.J.S.A.* 18A:12-3 explicitly addresses a board of education's authority to remove a board member for failure to attend three consecutive meetings of the board without good cause; the statute does not limit missed meetings to "regular" meetings; and the Board's Policy 0145 "Board Member Resignation and Removal" cannot override the authority afforded to it by *N.J.S.A.* 18A:12-3. The ALJ concluded that the Board properly removed petitioner pursuant to *N.J.S.A.* 18A:12-3 based on his failure to attend four consecutive meetings of the Board. Accordingly, the ALJ granted the Board's motion for summary decision and dismissed the petition.

Upon review, the Commissioner concurred with the ALJ's findings and conclusion in this matter. Accordingly, the Initial Decision of the OAL was adopted as the final decision and the petition was dismissed.

<p>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.</p>

March 2, 2020

New Jersey Commissioner of Education

Final Decision

Archange Antoine,

Petitioner,

v.

Board of Education of the Borough of Roselle,
Union County,

Respondent.

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.

Upon such review, the Commissioner agrees with the Administrative Law Judge (ALJ) that the Board properly removed petitioner pursuant to *N.J.S.A.* 18A:12-3 based on his failure to attend more than three consecutive meetings of the Board. The statute does not limit missed meetings to “regular” meetings, and the Board’s policy cannot override the authority afforded to it by the statute.

Accordingly, the Initial Decision of the OAL is adopted as the final decision in this matter and the petition is hereby dismissed.

IT IS SO ORDERED.¹

COMMISSIONER OF EDUCATION

Date of Decision: March 2, 2020
Date of Mailing: March 4, 2020

¹ 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).



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

SUMMARY DECISION

OAL DKT. NO. EDU 12958-18

AGENCY DKT. NO. 218-8/18

ARCHANGE ANTOINE,

Petitioner,

v.

**BOARD OF EDUCATION OF THE
BOROUGH OF ROSELLE, UNION
COUNTY,**

Respondent.

William Strazza, Esq., for petitioner (The Law Office of William Strazza,
attorneys)

Allan C. Roth, Esq., for respondent (Ruderman & Roth, attorneys)

Gregory J. Cannon, Esq., for participant Jonathan Spearman (Sobel, Han &
Cannon, attorneys)

Record Closed: December 30, 2019

Decided: January 27, 2020

BEFORE **MARGARET M. MONACO**, ALJ:

STATEMENT OF THE CASE

Petitioner Archange Antoine (petitioner) contests his removal from respondent Roselle Board of Education (the Board) predicated on his alleged failure to attend three or more consecutive Board meetings.

PROCEDURAL HISTORY

On August 31, 2018, petitioner filed a Verified Petition with the Commissioner of Education (the Commissioner), accompanied by a motion for emergent relief. Petitioner alleges that his “removal from the board was improper, unlawful and in violation of the [Board’s] own policy, since he only missed one regular meeting,” and that the Board’s decision to remove him was arbitrary, capricious and unreasonable.¹ Petitioner seeks an order enjoining the Board from enforcing its resolution removing him as a member of the Board, requiring his immediate reinstatement, and voiding the Board’s actions to remove him. The Department of Education transmitted the matter to the Office of Administrative Law for a hearing. On September 12, 2018, oral argument was entertained on petitioner’s emergent-relief motion, which was denied by Order dated September 27, 2018. The Commissioner issued a Decision on Application for Emergent Relief on October 12, 2018, adopting the Order denying emergent relief. On May 9, 2019, I issued an Order permitting Jonathan Spearman, who holds the Board seat formerly held by petitioner, to participate in the within matter. The hearing scheduled for February 26, May 14, and May 17, 2019, was adjourned at the parties’ request, and the parties ultimately filed cross-motions for summary decision. In this regard, the parties filed a Joint Stipulation of Facts accompanied by various exhibits. Petitioner filed a brief in support of his motion. The Board submitted a brief in support of its motion; a brief in opposition to petitioner’s motion; and a certification by counsel (Roth Cert.), which attached, among other documents, a certification by the District’s business administrator/board secretary, Anthony Juskiewicz (Juskiewicz Cert.), and certifications by five Board members, Donna Eleazer (Eleazer Cert.), Patricia Fabrizio (Fabrizio Cert.), Sherise Pollard (Pollard Cert.), Richard Villeda (Villeda Cert.), and

¹ Although the Verified Petition included three counts, petitioner is proceeding only as to count one and has voluntarily withdrawn count two (which contested the adequacy of the Board’s notice) and count three (which asserted that petitioner had good cause for missing the meetings).

Courtney Washington (Washington Cert.).² Mr. Spearman was afforded the opportunity to respond to the cross-motions. No response was received by the required deadline, on which date the record closed.

FINDINGS OF FACT

The parties stipulated to the majority of the facts. Based upon a review of the documentary evidence presented, including the Joint Stipulation of Facts (Stip.) and the certifications submitted by the Board, I **FIND** the following pertinent undisputed **FACTS**:

Petitioner was duly elected for a three-year term to the Board commencing on January 1, 2018. (Stip. at ¶ 1.) The Board is a public-school board of education organized under N.J.S.A. 18A:10-1 et seq. (Stip. at ¶ 2.) Pursuant to Board Policy 0141, the Board consists of nine members who serve a term of three years. (Stip. at ¶ 3.)

The Board posts its 2017–2018 “Board Agendas and Minutes” on its website. (Stip. at ¶ 7.) Items II(D) and II(E) on the Board’s January 8, 2018, “Reorganization Meeting Agenda” detailed a proposed resolution announcing the “Legal Notice of Scheduled Meetings for the Year 2018” in order for the Board to be in compliance with the Open Public Meetings Act. (Stip. at ¶ 8.) According to District Policy 0154, “[t]he Board of Education shall at the organizational meeting . . . [r]eadopt existing bylaws and policies for the Board’s operation and the operation of the school system.” (Stip. at ¶ 9 and Exhibit C.) The Board’s “Reorganization Meeting Minutes” for January 8, 2018, reflect that Items II(D) through (I) were tabled to the next Board meeting scheduled for Monday, January 29, 2018. (Stip. at ¶ 10 and Exhibit D.) The Board did not meet on January 29, 2018, due to inclement weather. (Stip. at ¶ 11.)

The Board held a “Special Meeting” on February 8, 2018. (Stip. at ¶ 12.) On the “Special Meeting Agenda” were items that had been tabled at the “Reorganization Meeting” on January 8, 2018. (Ibid.) The Board did not address these items on the

² The certifications by the business administrator/board secretary and the Board members had been previously filed in opposition to petitioner’s motion for emergent relief.

February 8, 2018, "Special Meeting Agenda," as the minutes reflect that the Board took public comments and posed questions to the superintendent. (ibid.)

On the Board's February 26, 2018, "Regular Meeting Agenda" was "Reorganization Item[] A. Designation of Annual Meeting Schedule," specifically stating:

LEGAL NOTICE OF SCHEDULED MEETINGS FOR THE YEAR 2018

Pursuant to Chapter 231.P.L. 1975 known as the "Open Public Meetings Act," the Roselle Board of Education . . . , at the Regular Meeting held on January 29, 2018, approve setting the Regular Meetings on the fourth Monday of each month when applicable, at the Abraham Clark High School, 122 East Sixth Avenue, Roselle, N.J. commencing at 7:00 p.m., February 2018 through December 2018.

Monday March 26, 2018	Regular Public Meeting	7:00 p.m.
Monday April 30, 2018*	Regular Public Meeting	7:00 p.m.
Monday May 21, 2018*	Regular Public Meeting	7:00 p.m.
Monday June 25, 2018	Regular Public Meeting	7:00 p.m.
Monday July 23, 2018	Regular Public Meeting	7:00 p.m.
Monday August 27, 2018	Regular Public Meeting	7:00 p.m.
Monday September 24, 2018	Regular Public Meeting	7:00 p.m.
Monday October 15, 2018*	Regular Public Meeting	7:00 p.m.
Monday November 19, 2018*	Regular Public Meeting	7:00 p.m.
Monday December 17, 2018*	Regular Public Meeting	7:00 p.m.

*Identifies meeting not scheduled for the 4th Monday.

Notice of any additions to the above schedule or changes in the time, date or place of any scheduled meeting will be posted in the locations and mailed to the newspapers designated by resolution of the Roselle Borough Board of Education adopted on January 29, 2018 in advance, as required by law.

[Stip. at ¶ 13.]

The Board's "Regular Meeting Minutes" for February 26, 2018, indicate that the resolution passed by a vote of 8-0. (ibid.) At the time of adopting this resolution, the Board had a total of ten "Regular Public Meetings" scheduled for 2018. (ibid.) These ten meetings were meetings noticed as voting meetings. (ibid.) Any other meeting of the Board was advertised and public notice was given if a vote of the whole Board was to be taken. (ibid.)

On May 17, 2018, petitioner failed to attend the Board's "Workshop Meeting." (Stip. at ¶ 14.) This meeting was not set forth in the Board's annual meeting schedule. (Ibid.) The May 17, 2018, "Workshop Meeting Minutes" show that the "Workshop Meeting" began at 7:06 p.m. and ended 8:46 p.m. and was attended by five of the nine Board members.

"Workshop Meetings" were instituted for the express purpose of addressing Board agenda items prior to the scheduled monthly meetings so as to minimize the length of the scheduled monthly meetings and address issues of efficiency and timeliness during the monthly meeting. (Stip. at ¶ 15.) These Workshop Meetings were regularly held monthly meetings and not usually voting sessions. (Ibid.)

Petitioner attended the Board's "Regular Meeting" on May 21, 2018. (Stip. at ¶ 16.)

On May 24, 2018, petitioner failed to attend the Board's "Special Meeting." (Stip. at ¶ 17.) This meeting was not set forth in the Board's annual meeting schedule. (Ibid.) The only business on the "Special Meeting Agenda" was "District Goal Setting." (Ibid.; see Roth Cert. at Exhibit 6.) The "Special Meeting" minutes reflect that the special meeting was attended by six of the nine Board members. (Stip. at ¶ 17.) The "Special Meeting" minutes further reflect that neither the superintendent nor the assistant superintendent were in attendance. (Ibid.) Accordingly, the Board determined that it could not achieve the special meeting's business and "another [meeting] would need to take place." (Ibid.)

On June 11, 2018, petitioner failed to attend the Board's "Special Meeting." (Stip. at ¶ 18.) This meeting was not set forth in the Board's annual meeting schedule. (Ibid.) The only business on the "Special Meeting Agenda" was "District Goal Setting for 2018–19." (Ibid.; see Roth Cert. at Exhibit 6.) The "Special Meeting" minutes reflect that the special meeting was attended by seven of the nine Board members. (Stip. at ¶ 18.)

On June 20, 2018, petitioner failed to attend the Board's "Workshop Meeting." (Stip. at ¶ 19.) This meeting was not set forth in the Board's annual meeting schedule.

(Ibid.) The June 20, 2018, “Workshop Meeting” Agenda was the June 25, 2018, “Regular Meeting Agenda.” (Ibid. and Exhibit E.) According to the “Notice of Roselle Board of Education Workshop Meeting Change,” the Board “determined that there is a need to conduct workshop sessions for the purpose of preparing Board business and the presentation of Board Committee reports prior to the regularly advertised Board meetings.” (Stip. at ¶ 19; see Roth Cert. at 6.) Public comments were not taken at the June 20, 2018, “Workshop Meeting,” as members of the public were not present. (Stip. at ¶ 20.)

On June 25, 2018, petitioner failed to attend the Board’s “Regular Public Meeting.” (Stip. at ¶ 21.) This meeting was set forth in the Board’s annual “Regular Public Meeting” schedule. (Ibid.)

Petitioner did not notify Business Administrator/Board Secretary Juskievicz that he would not be in attendance at any of the above scheduled meetings. (Stip. at ¶ 23.) The Board’s bylaws, policies, and regulations do not place an affirmative duty upon a Board member to alert the Board of a planned or unplanned absence from a meeting. (Ibid.) Past practice demonstrates that Board members can notify the business administrator/board secretary if a Board member is unable to attend a meeting. (Ibid.) Board members do appear telephonically at scheduled meetings. (Stip. at ¶ 24.) The Board has a practice of permitting Board members who give advance notice to the business administrator/board secretary to appear at Board meetings telephonically. (Stip. at ¶ 25.) The Board has not formally adopted a bylaw, policy, or regulation that recognizes the attendance of a meeting by a Board member via telephone, nor has the Board defined the exact practice and standard for telephonic attendance at meetings. (Stip. at ¶ 24.) Past practice demonstrates that Board members are aware that telephonic appearances are treated as attendance at the Board meeting. (Ibid.) Petitioner telephonically attended the “Special Meeting” scheduled for May 7, 2018. (Stip. at ¶ 25.)

The duties of Business Administrator/Board Secretary Juskievicz include advertising to the public all meetings of a quorum of the Board. (Juskievicz Cert. at ¶ 2.) He does not advertise committee meetings, which are not considered regular meetings of the entire Board. (Ibid.)

Business Administrator/Board Secretary Juskiewicz also maintains and updates the records regarding Board members' attendance at each meeting. (Juskiewicz Cert. at ¶ 6.) Petitioner failed to attend four consecutive Board meetings on May 24, June 11, June 20, and June 25, 2018, which were advertised meetings of the entire Board, where a quorum of the Board existed. (Juskiewicz Cert. at ¶¶ 2, 8-9; see Roth Cert. at Exhibit 6.) The meeting on June 25, 2018, was listed as a regular meeting on the Board's annual meeting schedule; the meetings on May 24, 2018, and June 11, 2018, were special meetings; and the meeting on June 20, 2018, was a workshop meeting. (See Roth Cert. at Exhibit 6.)

At the Board's meeting on August 16, 2018, a motion and a second were made to give notice to petitioner that the Board would be considering removing him from the Board for missing more than three consecutive meetings of the Board consistent with N.J.S.A. 18A:12-3. (Juskiewicz Cert. at ¶ 13.) The audio recording of the "Workshop Meeting" held on August 16, 2018, reflects a consensus of the Board to have the Board attorney provide notice to petitioner that his removal as a Board member would be discussed at the subsequent Board meeting. (Stip. at ¶ 22.) On or about August 21, 2018, Business Administrator/Board Secretary Juskiewicz sent a chart, via e-mail, to each Board member, including petitioner, indicating all of the Board members' attendance at meetings since January 2018. (Juskiewicz Cert. at ¶¶ 7, 18.)

On or about August 22, 2018, the Board's attorney, Allan C. Roth, Esq., sent correspondence to petitioner which states:

Please be advised that pursuant to Board Policy 145, the Board has requested that you be provided notice that at its Monday, August 27, 2018 meeting, beginning at 7:00 p.m. in the Abraham Clark High School auditorium, the Board will discuss your removal from the Board for missing three consecutive meetings, pursuant to N.J.S.A. 18A:12-3 and Berg v. Blackhorse Pike Regional School District, 1981 S.L.D. March 3.

[Stip. at ¶ 26 and Exhibit F.]

The notice did not specify the exact meeting dates missed by petitioner. (Stip. at ¶ 27.) No Board policy requires specific notice to a Board member of meeting dates missed by said member. (ibid.)

Prior to the August 27, 2018, Board meeting, petitioner requested that, if the Board would be attempting to remove him from the Board, he wanted the discussion to be held in public session. (Juskiewicz Cert. at ¶ 14.)

On August 27, 2018, at the next meeting of the full Board, a motion and a second were made to remove petitioner for missing three or more consecutive meetings of the Board. (Juskiewicz Cert. at ¶ 15.) Following the motion to remove petitioner, petitioner was given the floor to present evidence of whether he had good cause to miss the meetings. (Id. at ¶ 16.) Petitioner presented evidence and handed out documents to the Board members. (ibid.) Thereafter, a discussion was held by the Board and, following the Board's discussion, petitioner was given additional time to respond to the Board members' discussion. (ibid.) At the conclusion of all discussion regarding the matter, the vote was taken to remove petitioner from the Board. (Id. at ¶ 17.) A majority of the Board voted to remove petitioner from the Board. (ibid.) Petitioner was removed from his position on the Board by a 5-4 vote. (Stip. at ¶ 28.) The five votes for removal were cast by Board members Patricia Fabrizio, Donna Eleazer, Richard Villeda, Sherise Pollard, and Courtney Washington. (ibid.; see also Fabrizio Cert. at ¶¶ 9, 11-13; Eleazer Cert. at ¶¶ 9-12; Villeda Cert. at ¶¶ 9-12; Pollard Cert. at ¶¶ 9-12; Washington Cert. at ¶¶ 5-8.)

On or about January 6, 2014, the Board adopted District Policy 0145, entitled "Board Member Resignation and Removal," which states in relevant part:

A member who fails to attend three consecutive regular meetings of the Board without good cause may be removed from office on the affirmative votes of a majority of the remaining Board members, provided that

1. The member's removal was proposed at the immediately previous Board meeting; and
2. Notice of the proposed removal was given to the affected member at least forty-eight hours in

advance of the meeting at which the vote will be taken.

[Stip. at ¶ 4 and Exhibit A.]

District Policy 0000.02, entitled “Introduction (M) Bylaws, Policies & Regulations,” states in pertinent part:

Definitions

The following terms used in these bylaws, policies, and regulations shall have the meanings set forth below unless the context requires a different meaning or a different definition is supplied:

.....

“Meeting” means a gathering that is attended by or open to all of the members of the Board of Education, held with the intent on the part of the Board members present to discuss or act as a unit on the specific public business of the Board of Education.

[Stip. at ¶ 5 and Exhibit B.]

The policy further defines the rules of construction applicable to the Board’s bylaws, polices, and regulations as follows:

1. Wherever possible, language shall be given its clear and ordinary interpretation;
2. Language shall be construed to have a meaning that complies with law;
3. In the event bylaws, policies and regulations conflict with one another, the later adopted bylaw, policy or regulation shall take precedence over the earlier, and the more specific bylaw, policy or regulation shall take precedence over the more general;
4. Except as otherwise provided by the context, the auxiliary verbs “shall,” “will,” and “must” indicate a mandated action, and the auxiliary verb “may” indicates an action that is permitted but is not mandated.

[Stip. at ¶ 6 and Exhibit B.]

During their respective tenures on the Board, Board members Fabrizio, Eleazer, Villeda, Pollard, and Washington have always understood regular Board meetings to mean a meeting of a quorum of the Board that was advertised and consistent with the Open Public Meetings Act, as opposed to a committee meeting which does not consist of a quorum of the Board and is not advertised, and that any advertised meeting of the entire Board is considered to be a regular meeting of the Board, including, but not limited to, scheduled monthly calendar meetings, special meetings, emergency meetings, workshop meetings, or any other full meeting of the Board. (Fabrizio Cert. at ¶ 4; Eleazer Cert. at ¶ 4; Villeda Cert. at ¶ 4; Pollard Cert. at ¶ 4; Washington Cert. at ¶ 4.)

LEGAL DISCUSSION AND CONCLUSIONS

Pursuant to N.J.A.C. 1:1-12.5(b), summary decision “may be rendered if the papers and discovery which have been filed, together with the affidavits, if any, show that there is no genuine issue as to any material fact challenged and that the moving party is entitled to prevail as a matter of law.” This rule is substantially similar to the summary-judgment rule embodied in the New Jersey Court Rules. See Judson v. Peoples Bank & Trust Co. of Westfield, 17 N.J. 67, 74 (1954). In Brill v. Guardian Life Insurance Co., 142 N.J. 520, 540 (1995), the New Jersey Supreme Court addressed the appropriate test to be employed in deciding the motion:

[A] determination whether there exists a “genuine issue” of material fact that precludes summary judgment requires the motion judge to consider whether the competent evidential materials presented, when viewed in the light most favorable to the non-moving party, are sufficient to permit a rational factfinder to resolve the alleged disputed issue in favor of the non-moving party. The “judge’s function is not . . . to weigh the evidence and determine the truth of the matter but to determine whether there is a genuine issue for trial.” . . . If there exists a single, unavoidable resolution of the alleged disputed issue of fact, that issue should be considered insufficient to constitute a “genuine” issue of material fact for purposes of Rule 4:46-2.

[Citations omitted.]

In evaluating the merits of the motion, all inferences of doubt are drawn against the movant and in favor of the party against whom the motion is directed. Judson, 17 N.J. at 75. However, “[w]hen a motion for summary decision is made and supported, an adverse party in order to prevail must by responding affidavit set forth specific facts showing that there is a genuine issue which can only be determined in an evidentiary proceeding.” N.J.A.C. 1:1-12.5(b). The parties agree, and I **CONCLUDE**, that there is no genuine issue as to any material fact and the matter is ripe for summary decision.

Against this backdrop, it is undisputed that petitioner failed to attend four consecutive meetings of the Board. Petitioner argues, however, that he “only missed one (1) regular meeting that appeared on the [Board’s] ‘Regular Public Meeting’ schedule—the June 25, 2018 regular meeting.”

N.J.S.A. 18A:12-3 explicitly addresses a board of education’s authority to remove a board member for failure to attend meetings. The statute directs in pertinent part:

Cessation of membership.

Whenever a member of a local or regional board of education shall cease to be a bona fide resident of the district, or of any constituent district of a consolidated or regional district which he represents, or shall become mayor or a member of the governing body of a municipality, his membership in the board shall immediately cease; and, any member who fails to attend three consecutive meetings of the board without good cause may be removed by it.

[Emphasis added.]

The principles governing statutory construction are well settled. The “overriding objective in determining the meaning of a statute is to ‘effectuate the legislative intent in light of the language used and the objects sought to be achieved.’” McCann v. Clerk of Jersey City, 167 N.J. 311, 320 (2001) (citation omitted). The general rule of statutory construction requires an examination of the language of a statute to determine whether the language is clear or ambiguous and susceptible to more than one interpretation.

The Supreme Court explained in Murray v. Plainfield Rescue Squad, 210 N.J. 581, 592 (2012) (citations omitted):

The objective of all statutory interpretation is to discern and effectuate the intent of the Legislature. To achieve that objective, we begin by looking at the statute's plain language, ascribing to the words used "their ordinary meaning and significance." We do not view the statutory words in isolation but "in context with related provisions so as to give sense to the legislation as a whole." If the Legislature's intent is clear on the face of the statute, then we must apply the law as written. It is not our function to rewrite a plainly written statute or to presume that the Legislature meant something other than what it conveyed in its clearly expressed language.

Pursuant to the plain and unambiguous language of the statute, the Legislature did not limit the discretionary authority of boards of education to remove a member to situations where the member has missed only "regular" meetings of the board. Rather, N.J.S.A. 18A:12-3 provides that a board of education is authorized to act if a board member fails to attend three consecutive meetings of the board, without any limitation regarding the meeting's designation as a "special," "regular," or "workshop" meeting.

In Berg v. Black Horse Pike Regional School District Board of Education, EDU 0875-80 and EDU 1007-80, Initial Decision (January 19, 1981), adopted, Comm'r (March 3, 1981),³ the petitioner, who had missed two regular meetings, one special meeting and two work sessions, asserted that the board was barred by the statute from removing him since he missed only two regularly scheduled monthly meetings. In rejecting this contention, the administrative law judge (ALJ) observed that the precursor of N.J.S.A. 18A:12-3 was N.J.S.A. 18:6-11, which provided that "[a] board member who shall fail to attend three consecutive regular meetings of the board without good cause may be removed by the board" (emphasis added), and that the new statute eliminated any reference to the type of meeting held by boards of education. The ALJ held that the "statute refers only to three consecutive meetings and not three consecutive regular monthly meetings as interpreted by petitioner, [and] [t]he plain meaning of the words supports the former interpretation." The Commissioner agreed and found the omission of

³ A copy of this unpublished decision is attached to the Roth certification as Exhibit 4.

the designation “regular” when the Legislature revised the statute to be “significant,” and that “if the revised version of the statute had intended to mean ‘regular’ the Legislature would have so stated.”

The same rationale applies with equal force to the within matter. It is well settled that “[t]he Legislature is presumed familiar with prior legislation.” N.J. Coal. of Health Care Prof’ls v. N.J. Dep’t of Banking & Ins., 323 N.J. Super. 207, 256 (App. Div.), certif. denied, 162 N.J. 485 (1999). The Legislature’s deletion of the designation “regular” in the current statute reasonably evidences an intent on the part of the Legislature to expand the ability of a board of education to remove a board member for poor attendance.

The crux of petitioner’s argument is that, notwithstanding the statutory language, District Policy 0145 limits the Board’s authority to remove him unless he “fail[ed] to attend three consecutive regular meetings of the Board” Petitioner relies on N.J.S.A. 18A:11-1 and Matawan Regional Teachers Association v. Matawan-Aberdeen Regional School District Board of Education, 223 N.J. Super. 504 (App. Div. 1988), in support of the binding nature of bylaws adopted by a local board of education.

The New Jersey Supreme Court has recognized that “[l]ocal boards of education are creations of the State and, as such, may exercise only those powers granted to them by the Legislature—either expressly or by necessary or fair implication.” Fair Lawn Educ. Ass’n v. Fair Lawn Bd. of Educ., 79 N.J. 574, 579 (1979). A board of education derives the authority to adopt bylaws and policies from N.J.S.A. 18A:11-1(c), which directs:

The board shall . . . [m]ake, 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

[Emphasis added.]

In Matawan Regional Teachers Association, the Appellate Division addressed the issue of whether a local school board may lawfully adopt a plan, which included the

closing and sale of a school building by a majority vote of its full membership after consideration at a single public meeting, even though its bylaws required adoption by a two-thirds vote of its full membership after consideration at two public meetings. Although the court concluded that the board was bound by the bylaw that requires two public meetings for adoption of the plan, it explained that “the bylaw requiring that action on non-emergent matters of policy be considered at two public meetings does not conflict directly or indirectly with any statute [and] [i]ts purpose is not to remove the responsibility and authority to act from those members of a local board who are authorized by state law to act.” Matawan Reg’l Teachers Ass’n, 223 N.J. Super. at 509. Accordingly, the court held that, “[i]n the absence of any statute to the contrary, the board’s bylaw requiring two public meetings to adopt the plan is binding.” Id. at 510. However, the court also held that the board was not bound by the bylaw that limits the authority of the majority of the board. The court reasoned that “N.J.S.A. 18A:11-1 is silent with respect to the number of votes necessary to adopt rules and to govern and manage the district,” and “[i]t must be assumed that by its silence the Legislature intended the common-law rule to apply, i.e., a majority vote of the members of the board constituting a quorum shall be sufficient.” Id. at 507. Accordingly, the court held that “the Legislature has empowered a majority of the majority of a local board to adopt bylaws and conduct the board’s business” and rejected “the argument that the Legislature has merely established a minimum number of affirmative votes necessary for local board action, which the board may increase in its bylaws to assure a broader consensus.” Ibid. In other words, a board of education is not bound by a bylaw that limits the authority of the board in a manner that is otherwise inconsistent with the law.

Similarly, in the context of a municipal regulation, it is well settled that “[a] municipality may not contradict a policy the Legislature establishes” and a “local government may not act contrary to State law.” Summer v. Teaneck Twp., 53 N.J. 548, 554 (1969); see Auto-Rite Supply Co. v. Mayor of Woodbridge, 25 N.J. 188 (1957). A pertinent question for consideration in determining whether the State has preempted an area from municipal regulation is whether “the ordinance conflict[s] with state law, either because of conflicting policies or operational effect (that is, does the ordinance forbid what the Legislature has permitted or does the ordinance permit what the Legislature has forbidden).” Overlook Terrace Mgmt. Corp. v. Rent Control Bd. of W. New York, 71

N.J. 451, 461 (1976). And, “an ordinance will fall if it . . . forbids what a statute expressly authorizes.” Summer, 53 N.J. at 554.

Turning to the within matter, if petitioner’s asserted interpretation and binding nature of the Board’s policy are accepted, the policy would in effect forbid the Board from removing a member for missing three consecutive meetings unless they were “regular” meetings, notwithstanding that N.J.S.A. 18A:12-3 unambiguously authorizes boards of education to take such action. Stated differently, petitioner’s position would limit the discretionary authority of the Board in a manner that is otherwise inconsistent with N.J.S.A. 18A:12-3.

I **CONCLUDE** that the Board had the authority to remove, and properly removed, petitioner pursuant to N.J.S.A. 18A:12-3 based on his failure to attend more than three consecutive meetings of the Board.

ORDER

I **ORDER** that petitioner’s Verified Petition be and hereby is **DISMISSED**.

I hereby **FILE** this initial decision with the **COMMISSIONER OF THE DEPARTMENT OF EDUCATION** for consideration.

This recommended decision may be adopted, modified or rejected by the **COMMISSIONER OF THE DEPARTMENT OF EDUCATION**, who by law is authorized to make a final decision in this matter. If the Commissioner of the Department of Education does not adopt, modify or reject this decision within forty-five days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

Within thirteen days from the date on which this recommended decision was mailed to the parties, any party may file written exceptions with the **COMMISSIONER OF THE DEPARTMENT OF EDUCATION, ATTN: BUREAU OF CONTROVERSIES AND DISPUTES, 100 Riverview Plaza, 4th Floor, PO Box 500, Trenton, New Jersey 08625-0500**, marked "Attention: Exceptions." A copy of any exceptions must be sent to the judge and to the other parties.

January 27, 2020
DATE



MARGARET M. MONACO, ALJ

Date Received at Agency: _____

Date Mailed to Parties: _____

jb