

16-26R
OAL Dkt. No. EDU 05919-23
Agency Dkt. No. 159-6/23

New Jersey Commissioner of Education
Final Decision

Rebecca Petersen,

Petitioner,

v.

Board of Education of the Hunterdon Central
Regional High School District, Hunterdon
County,

Respondent.

The record of this matter, the Initial Decision of the Office of Administrative Law (OAL), the exceptions filed by petitioner and respondent pursuant to *N.J.A.C. 1:1-18.4*, and the replies thereto, have been reviewed and considered. Upon review, the Commissioner is constrained to remand the matter to the OAL for further proceedings.

Petitioner, formerly a member of respondent Board of Education, alleges that the Board usurped the powers of the School Ethics Commission (SEC) granted pursuant to the School Ethics Act, *N.J.S.A. 18:12-21 to -34*, by investigating, prosecuting, and censuring her for anonymous social media posts that members of the public believed that she made. She seeks a declaration that the investigation and censure were *ultra vires*, that she was denied due process, and requests that the Board's related resolution be vacated. She also seeks indemnification and

counsel fees pursuant to *N.J.S.A. 18A:12-20* for her defense against the Board's *ultra vires* actions. The indemnification statute, *N.J.S.A. 18A:12-20*, states in relevant part:

Whenever a civil, administrative, criminal or quasi-criminal action or other legal proceeding has been or shall be brought against any person for any act or omission arising out of and in the course of the performance of his duties as a member of a board of education . . . the board of education shall defray all costs of defending such action, including reasonable counsel fees and expenses, together with costs of appeal, if any, and shall save harmless and protect such person from any financial loss resulting therefrom.

Following transmittal of the matter to the OAL and the exchange of discovery, the parties cross-moved for summary decision. In connection therewith, the parties submitted a signed joint stipulation of facts. Relevant to petitioner's indemnification claim, stipulated fact #18 states: "All such Board action conducted against Mrs. Petersen arose out of and in her role as a member of the Board." The Administrative Law Judge (ALJ) held that stipulated fact #18 constituted a legal conclusion and did not "find it as fact." Initial Decision at 7.

Ultimately, the ALJ granted petitioner's motion for summary decision in part, and granted respondent's motion for summary decision in part. With respect to the Board resolution, the ALJ concluded that the Board's undated resolution which states, in part, that it had "identified evidence of intentional actions [by petitioner] that eroded trust and risked the integrity and transparency of the entire Board at a sufficient level to warrant a complaint be filed with the [School Ethics] Commission" was *ultra vires* because it resulted in the *de facto* discipline of petitioner for violation of the Code of Ethics for School Board Members (Code).

Concerning her due process claims, the ALJ concluded that because the Board illegally exceeded its authority in taking it upon itself to adjudicate and impose discipline for perceived

Code violations, whether it afforded petitioner due process is irrelevant. As for petitioner's indemnification claim, the ALJ found that the March 29, 2023, Board meeting was a "legal proceeding" under the indemnification statute, *N.J.S.A. 18A:12-20*. However, the ALJ concluded that petitioner is not entitled to indemnification under *N.J.S.A. 18A:12-20* because there is insufficient evidence that the Board's legal proceeding concerned petitioner's performance of her duties as a Board member.

In particular, the ALJ found no nexus between the social media posts at issue—which petitioner never admitted to making—and petitioner's exercise of her duties as a Board member. Initial Decision at 18. The ALJ also recognized that the parties' joint stipulation did not address the social media posts and found that the record lacked evidence connecting petitioner to the social media posts. As for stipulated fact #18, which provides that Board action against petitioner "arose out of and in her role as a member of the Board," the ALJ concluded that she was not bound by the agreement of counsel as to how a statute should be interpreted or applied. *Id.* at 17.

In her exceptions, petitioner argues, among other things, that the ALJ improperly rejected stipulated fact #18 as a legal conclusion and deprived the parties of a fair opportunity to provide a factual basis for the stipulation. In response, the Board agrees with the ALJ that stipulated fact #18 constitutes a legal conclusion that falls within the ALJ's purview, and that petitioner bears the burden of establishing that she satisfies the statutory criteria for indemnification set forth in

N.J.S.A. 18A:12-20. The Board does not agree that petitioner should be given an opportunity to present additional evidence on this issue because it has already been adjudicated.¹

Upon review, the Commissioner finds that a limited remand is required to allow the parties to present evidence relevant to the issue of indemnification, specifically whether the Board's March 29, 2023, meeting pertained to any act or omission arising out of and in the course of the performance of petitioner's duties as a Board member. *N.J.S.A. 18A:12-20*.

"The parties may by stipulation agree upon the facts or any portion thereof involved in any controversy. Such a stipulation shall be regarded as evidence and shall preclude the parties from thereafter challenging the facts agreed upon." *N.J.A.C. 1:1-15.11*. In contrast, judges are "not bound by the concession or agreement of counsel as to how [a] statute is to be interpreted." *Tibbs v. Boemi*, 109 *N.J. Super.* 200, 204 (App. Div.), *aff'd*, 55 N.J. 531 (1970). Here, a concession as to whether the Board's action against petitioner arose out of and in her role as a member of the Board "relate[s] to interpretation of a statute, an area as to which a stipulation is impermissible." *Schere v. Freehold*, 150 *N.J. Super.* 404, 408 (App. Div. 1977).

Although the Commissioner agrees with the ALJ that stipulated fact #18 was a legal conclusion, the Commissioner determines that the parties should be given the opportunity to present relevant evidence as to whether the Board's March 29, 2023, meeting pertained to any act or omission arising out of and in the course of the performance of petitioner's duties as a Board member. While the ALJ concluded that the present record contains insufficient evidence

¹ The Board submitted its own exceptions to the ALJ's initial decision wherein it argues that: (1) the Board did not discipline petitioner via its resolution authorizing the Board President to file ethics charges with the SEC because the underlying ethics complaint was filed within the statute of limitations period; and (2) the March 29, 2023, Board meeting was not a legal proceeding within the meaning of the indemnification statute.

to establish that the Board's legal proceeding concerned petitioner's performance of her duties as a Board member and denied the indemnification claim on that basis, the Commissioner finds that it was not unreasonable for the parties to believe that presentation of such evidence was unnecessary in light of stipulated fact #18. Thus, in the interest of fairness, a remand is warranted to allow supplementation of the record.

Accordingly, the matter is remanded to the OAL for the limited purpose of allowing the parties to present evidence relevant to the issue of indemnification as described herein. The Commissioner will adjudicate all other remaining issues following the remand proceedings.

IT IS SO ORDERED.



COMMISSIONER OF EDUCATION

Date of Decision: January 16, 2026
Date of Mailing: January 20, 2026



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

CROSS-MOTIONS FOR

SUMMARY DECISION

OAL DKT. NO. EDU 05919-23

AGENCY DKT. NO. 159-6/23

REBECCA PETERSEN,

Petitioner,

v.

**HUNTERDON CENTRAL REGIONAL HIGH
SCHOOL DISTRICT, BOARD OF
EDUCATION, HUNTERDON COUNTY,**

Respondent.

Gwyneth K. Murray-Nolan, Esq., for petitioner (Murray-Nolan Berutti LLC,
attorneys)

Joseph L. Roselle, Esq., for respondent (Schenck, Price, Smith & King, LLP,
attorneys)

BEFORE **JUDITH LIEBERMAN, ALJ:**

STATEMENT OF THE CASE

Petitioner Rebecca Petersen was a member of the Hunterdon Central Regional High School Board of Education (“Board” or “respondent”) during the times relevant to

this matter. She filed with the Commissioner of the Department of Education (“Commissioner”) a petition of appeal claiming that the Board usurped the powers of the School Ethics Commission (“SEC” or “Commission”) under the School Ethics Act, N.J.S.A. 18A:12-21 to -34 by “investigating, prosecuting, and censuring” her for anonymous social media posts that members of the public believed that she made.

The petition alleges that the Board unilaterally investigated and adjudicated petitioner’s alleged SEA violations; stripped her of due process protections when it held a legal proceeding against her; and issued a de facto censure as punishment for her violations. As relief, she seeks a declaration that the Board’s actions, which culminated in a Board resolution denouncing the social media comments and directing the Board President to file an ethics complaint against her with the Commission, were illegal and ultra vires, an order vacating the Board’s resolution, and indemnification for her legal fees under N.J.S.A. 18A:12-20 for her defense against and appeal of the Board’s actions against her.

The parties filed cross-motions for summary decision.

PROCEDURAL HISTORY

On June 9, 2023, petitioner filed the underlying petition of appeal with the Department of Education. On June 29, 2023, the Board filed a motion to dismiss the petition of appeal in lieu of an answer. The Department of Education transmitted the matter to the Office of Administrative Law, where, on July 3, 2023, it was filed as a contested case. N.J.S.A. 52:14B-1 to -15; N.J.S.A. 52:14F-1 to -13.

On September 1, 2023, petitioner filed a brief in opposition to respondent’s motion to dismiss and a cross-motion for summary decision. On November 21, 2023, respondent’s motion to dismiss and petitioner’s cross-motion for summary decision were denied.

Between November 12, 2023, and November 6, 2024, several prehearing conferences were convened to address the parties’ ongoing discovery disputes. On

November 27, 2024, petitioner filed a motion for sanctions based upon respondent's alleged failure to provide discovery and spoliation of evidence. The motion was denied on January 31, 2025, and the parties were ordered to complete all discovery by March 14, 2025.

The parties filed cross-motions for summary decision, and oral argument was heard on September 17, 2025. The record closed on September 18, 2025, after petitioner supplemented the record.

FACTUAL DISCUSSION AND FINDINGS

Petitioner explained the genesis of her complaint in her petition, which asserted in part:

During the public comment portion of the Board meeting of March 20, 2023, two local activists shared information alleging that a sitting Board member operated an anonymous Twitter account under the profile name *Mammallama* and posted inappropriate comments about transgender issues. Verified Pet., ¶¶ 1, 16. The Twitter account did not appear to hold itself out to be linked to a Board member in any capacity and did not contain any information not available to the public. *Id.* at ¶ 1. On March 21, 2023, petitioner received a request for comment from a local journalist who received a tip that petitioner was the owner of the Twitter account in question. *Id.* at ¶ 17. That same day petitioner met with Superintendent Jeffrey Moore, Board Vice President Dorothea Kellogg, and Board President Lisa Hughes, who accused petitioner of being the anonymous tweeter. *Id.* at ¶ 18–19. After that meeting, Board President Hughes contacted each Board member and informed them that petitioner was the person behind the anonymous tweets. Board President Hughes emailed the full Board that evening and attached a packet of evidence of the situation. *Id.* at ¶¶ 20–21.

The parties stipulated the following. I therefore **FIND** it as **FACT**:

1. Petitioner Rebecca Petersen (“Mrs. Petersen”) has been a member of the Hunterdon Central Regional High School (“HCRHS”) Board of Education since January 3, 2023.
2. On or about March 15, 2023, the Board, led by then President Lisa Hughes (“Hughes”), Vice President Dorothea Kellogg (“Kellogg”) and Superintendent Jeffrey Moore (“Moore”), initiated an investigation to demonstrate that Mrs. Petersen violated the Code of Ethics for School Board Members, N.J.S.A. 18A:12-24.1 (“Code”).
3. On March 24, 2023, Hughes called a special Board meeting to be held on March 29, 2023, to adjudicate whether Mrs. Petersen violated the Code.
4. Mrs. Petersen retained an attorney to protect her interests, who sent a letter to the Board informing it that it was engaged in action that was ultra vires and should immediately cease.
5. Board Counsel Alicia D’Anella (“D’Anella”) did not acknowledge the letter and never acknowledged that Mrs. Petersen was represented by counsel.
6. During the March 29, 2023 Executive Session, Moore presented “evidence” in support of his position that Mrs. Petersen violated the Code. See Exh. A.
7. Mrs. Petersen was not permitted to have legal counsel, present evidence or witnesses, or cross-examine any purported witnesses and was precluded from challenging the purported evidence against her, though Board counsel D’Anella was present.
8. Following Moore’s presentation of evidence, a majority of the Board weighed the evidence and believed that Mrs. Petersen violated the Code.

9. Mrs. Petersen denied all “charges” against her and objected to the legality and constitutionality of the proceedings under the New Jersey and federal constitutions and laws.
10. D’Anella provided the Board with three options for penalizing Mrs. Petersen for her alleged Code violations: (1) adopt a Resolution of Censure; (2) hold a Vote of No Confidence; or (3) vote to direct the Board President to file Ethics Complaints against Mrs. Petersen.
11. Kellogg stated that the purpose of a censure was to “publicly humiliate” Mrs. Petersen.
12. Between the March 29, 2023 Executive Session and the April 24, 2023 regular meeting of the Board, D’Anella, on behalf of the Board, drafted various options for the Board to consider, including (1) a Resolution of Censure; (2) a Vote of No Confidence; and (3) a Resolution directing the Board President to file Ethics Complaints against Mrs. Petersen with the New Jersey School Ethics Commission.
13. On April 19, 2023, Mrs. Petersen filed a Complaint in the United States District Court for the District of New Jersey, Civil No. 23-2189 (ZNQ)(JBD) (“Federal Complaint”), challenging and appealing the legality and constitutionality of the Board’s March 29, 2023 trial and seeking an injunction against the Board’s proposed punishment. On or about April 21, 2023, the Hon. Zahid N. Quraishi, U.S.D.J., issued an opinion denying Plaintiffs’ Motion for a Temporary Restraining Order.
14. At the regular meeting of the Board on April 24, 2023, the Board passed a resolution entitled “Motion to Authorize Board President to File Ethics Charges on the Board’s Behalf,” which directed the Board President to file ethics charges against Mrs. Petersen with the School Ethics Commission on the Board’s behalf and with the participation of individual members. Exh. B.

15. On May 5, 2023, Mrs. Petersen filed an Amended Complaint in Federal Court, challenging and appealing the legality and constitutionality of the Board's actions, seeking only declaratory relief, in the public interest.
16. On or about May 22, 2023, the Board filed a Verified Petition and Request for Emergent Relief with the Commissioner of Education against Mrs. Petersen, seeking her removal from the Board due to her then-pending lawsuit against the Board and Superintendent.
17. Petitioner moved to dismiss the Amended Complaint without prejudice, after which the Board withdrew its own action to seek petitioner's removal.

The stipulated facts referenced the following exhibits:

1. March 29, 2023, Executive Session Minutes: "Dr. Moore and Mrs. Hughes led discussions and presented evidence relating to allegations a Board member [sic] pertaining to correspondence received by the Board accusing a member of the Board of inappropriate comments and use of social media." J-A.
2. Undated Resolution that was read aloud:

Whereas, The Board, to the best of its ability and within the limits of its authority, has investigated the allegation brought by members of the public against Mrs. Petersen, a sitting member of the Board.

Whereas, That investigation identified evidence of intentional actions that eroded trust and risked the integrity and transparency of the entire Board at a sufficient level to warrant a complaint be filed with the School Ethics Commission against Mrs. Petersen;

Whereas, The Board recognizes the School Ethics Commission as the appropriate authority to adjudicate such complaints;

Therefore, be it RESOLVED as follows:

The Board directs the Board President to file ethics charges against Ms. Petersen on behalf of the Board and with the participation of individual members.

[J-B.¹]

Stipulated fact number eighteen provides, “All such Board actions conducted against Mrs. Petersen arose out of and in her role as a member of the Board.” This is a legal conclusion that is addressed in the legal analysis below. As such, I do not find it as fact.

Although not in the stipulated facts, I take official notice of the fact that the Board filed a complaint with the Commission in September 2023.² N.J.A.C. 1:1-15.2.

Parties’ Arguments

Petitioner argues that by investigating and “adjudicating” the allegations that were made by members of the public, the Board conducted an impermissible trial. Further, the “trial,” which was conducted during executive session, was improperly conducted as petitioner was denied an opportunity to be represented by counsel, present or challenge evidence or examine witnesses, while the Superintendent and President presented “evidence” against her. In addition to seeking an order declaring the Board’s actions invalid, she seeks indemnification of all of her legal costs from March 24, 2023, through the conclusion of this matter.

The Board asserts that it properly investigated the allegation that was brought to its attention by members of the community; it did not censure petitioner; and it did not usurp the Commission’s authority. It also asserted in its brief that petitioner is not entitled to indemnification because the allegation against her did not relate to her exercise of her

¹ This is an excerpt of the relevant portions of the resolution.

² Information about the substance of the complaint is not in the record.

duties as a board member and that it did not conduct the type of proceeding that is subject to the indemnification statute.

Petitioner further argues that, by agreeing to joint stipulation of fact number eighteen, the Board waived its argument concerning indemnification.

LEGAL ANALYSIS AND CONCLUSION

The provisions of N.J.A.C. 1:1-12.5, which govern motions for summary decision, mirror the language of R. 4:46-2 of the New Jersey Court Rules governing motions for summary judgment. N.J.A.C. 1:1-12.5 permits early disposition of a case before the case is heard if, based on the papers and discovery which have been filed, it can be decided “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.” N.J.A.C. 1:1-12.5(b). An adverse party does not bear an obligation to oppose the motion, but to survive summary decision, there must be “a genuine issue which can only be determined in an evidentiary proceeding.” Ibid. The non-existence of one entitles the moving party to summary decision. Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520 (1995). Moreover, even if the non-moving party comes forward with some evidence, this forum must grant summary decision if the evidence is “so one-sided that [the moving party] must prevail as a matter of law.” Id. at 536. Here, the parties do not assert that there are genuine issues as to any of the material facts, and none have been found. The matter is thus ripe for summary decision.

Did the Board act inappropriately?

The School Ethics Act, N.J.S.A. 18A:12-21 to -34, was established to ensure that members of local boards of education and local school administrators “avoid conduct which is in violation of their public trust or which creates a justifiable impression among the public that such trust is being violated.” N.J.S.A. 18A:12-22(a). To achieve this, the Legislature declared that there shall be “specific standards to guide their conduct” and a “disciplinary mechanism to ensure the uniform maintenance of those standards among them.” N.J.S.A. 18A:12-22(b). It thus established the Code of Ethics for School Board Members. N.J.S.A. 18A:12-24.1.

The Commission is the only entity that may adjudicate an allegation of a violation of the Code, and only the Commissioner of Education may impose discipline after the Commission recommends the discipline.³ N.J.S.A. 18A:12-29; See also Castriotta v. Bd. of Educ. of the Twp. of Roxbury, EDU 09217-10, Comm'r (May 18, 2011), <https://www.nj.gov/education/legal/commissioner/2011/may/185-11.pdf>, rev'd in part, 427 N.J. Super. 592 (App. Div. 2012); DeLuna v. Bertram, C31-06, slip op. at 9 (April 27, 2007)⁴ ("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 occurred and impose discipline.").

Under N.J.S.A. 18A:12-29, "any person" may file a complaint alleging a violation of the Code with the Commission. See also N.J.A.C. 6A:28-1.2 ("Complainant" means the person bringing a complaint of an alleged violation of the Act or the person established as a lead complainant pursuant to N.J.A.C. 6A:28-6.6.) Due to this limitation on who may file, a board of education may not file a complaint. Rather, it may authorize its Superintendent to file a complaint, or an individual board member may do so in their individual capacity. Castriotta, Commissioner Decision 139-7/10 at 6; See also Williams v. Cianciulli, C64-22, slip op. at 8 (February 18, 2025)⁵ (the "Commission has consistently held the belief that whether a Board votes to approve and/or adopts a resolution authorizing a Board member to file an ethics complaint with the Commission, the fact remains that the individual, and the individual *alone*, is the named Complainant, and thus, it is his or her *own* complaint, and not the Board's").

³ Under the regulations implementing the SEA, N.J.A.C. 6A:28-1.1 to -10.1, "censure" is "a formal expression of disapproval by the Commissioner of Education for a violation(s) of the [SEA], which is publicized by the adoption of a formal resolution by the School Ethics Commission, and which is provided to the district board of education or the board of trustees to read and adopt at its next regularly scheduled public meeting." N.J.A.C. 6A:28-1.2.

⁴ Unpublished court decisions and administrative decisions are not precedential. They are referenced here because they provide relevant guidance.

⁵ This matter was consolidated with two others, Grober v. Cianciulli, C77-22, and IMO Pamela Stanley, C99-22

In Castriotta, a school board member alleged that the board acted improperly and beyond its authority when it passed a resolution censuring her for unethical conduct. The superintendent sent a letter to the president of the board “to express [his] outrage at the treatment” that he and the principal received “at the hands of Board member Maureen Castriotta.” 427 N.J. Super. at 598. The superintendent accused Castriotta of violating the New Jersey School Administrative Code and “encourage[ed] the Board to take action against” her. Ibid. In response, the Board's secretary/business administrator sent petitioner a certified letter captioned “Notice of Potential Censure” that notified petitioner that he had been directed by the President of the Board of Education to advise her that the Board would consider a censure resolution against her at an upcoming meeting. The letter further advised Castriotta:

You may request that the discussion concerning possible disciplinary action against you take place in private session by advising the undersigned of your request in writing no later than noon on May 21, 2010. If the matter is to be discussed in executive session, that discussion will begin at 6:30 p.m.

In general the charges against you relate to your conduct on April 27, 2010 which is detailed in the attached draft censure resolution. The Board has set aside a maximum of forty-five (45) minutes for the discussion. You are permitted to be represented by counsel or a representative of your choosing, to present witnesses on your behalf, and to address the Board directly should you desire. You should be aware, however, that it is the position of the District that if you choose to be represented by counsel, you will do so at your own expense and that the indemnification statute does not apply in this instance. If you choose to have discussion in executive session, witnesses will be called into the meeting one at a time to address the Board and will be excused after making their statements. It is anticipated that the Superintendent and High School principal will also address the Board.

[Id. at 598–599.]

The superintendent and principal testified “before the Board as to [Castriotta’s] alleged conduct on the day of the student protest that formed the basis for the charges against her. Petitioner addressed the Board in response, refuting the allegations against

her.” Id. at 599. After hearing from the parties involved, the Board voted to pass a resolution that provided, in pertinent part:

WHEREAS, a majority of the Board wish to express in a public forum their dissatisfaction with Mrs. Castriotta's conduct as aforesaid;

NOW, THEREFORE, be it resolved that the Members of the Roxbury Board of Education do hereby censure fellow Board Member Maureen Castriotta for the aforesaid unbecoming conduct and caution her to avoid such conduct during the balance of her term on the Board; and be it further

RESOLVED that a copy of this Resolution shall be sent to the Commissioner of Education and the Executive County Superintendent.

[Id. at 600.]

Castriotta challenged the Board's actions, arguing that it was barred by the SEA. The Commissioner agreed:

[R]eview 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. 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.

[Castriotta v. Bd. of Educ. of the Twp. of Roxbury, EDU 09217-10, Comm'r (May 18, 2011) at 5-6.]

In so holding, the Commissioner “rejected as wholly meritless” the Board’s “contention that its censure of petitioner was not ‘discipline’ but rather merely ‘an expression of its dissatisfaction with her conduct.’” The Commissioner found “[s]uch a claim” to be “obviously a distinction without a difference.” *Id.* at 6, n. 2. Thus, by adjudicating an allegation that Castriotta violated the Code and imposing discipline, it exceeded its authority and usurped that of the Commission.

These cases recognize that a Board may have reason to believe that one of its members violated the Code and may wish to take action by authorizing an individual to file a complaint with the Commission. This begs the question, how may a board of education develop a suspicion of a violation? N.J.S.A. 18A:11-1 authorizes boards of education to:

- 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.

This statute confers “broad general authority to the boards of local school districts.” Edmondson v. Bd. of Educ. of Borough of Elmer, 424 N.J. Super. 256, 262 (App. Div. 2012). This includes the authority “to discipline one of its members who has violated a clearly constructed and adopted Board policy governing the conduct of its members.” Castriotta, Comm’r Decision, 139-7/10, slip op. at 6.

N.J.S.A. 18A:12-30, which authorizes the Commission to impose sanctions on a board of education member who has violated the Code, also contemplates that N.J.S.A. 18A:11-1(c) and (d) authorize a board to investigate matters of concern about its members. It provides:

Notwithstanding the provisions of any other law or regulation to the contrary, the sanctions authorized by this act may be imposed on any school official pursuant to the procedures established in section 9 of this act. However, nothing in this act shall be construed to limit the authority of any board of education or any appointing authority to process charges or complaints pursuant to the procedures contained in Titles 18A or 11A of the New Jersey Statutes.

[N.J.S.A. 18A:12-30, emphasis added.]

Thus, a school board may address a complaint about one of its members and evaluate whether further action is required and, if so, what type of action is warranted.

However, the question remains whether the Board acted properly after it addressed the allegations concerning petitioner. Unlike in Castriotta, the Board did not expressly discipline petitioner. Rather, it wrote in its resolution that its investigation “identified evidence of intentional actions that eroded trust and risked the integrity and transparency of the entire Board at a sufficient level to warrant a complaint be filed with the Commission.” J-B. Contrary to petitioner’s assertion, the Board did not explicitly adopt “a resolution censuring Mrs. Petersen for alleged violations of the Code of Ethics[.]” Pet’r’s Br. at 11. However, it did not file a complaint with the Commission by the time

petitioner filed her petition with the Commissioner or when the matter was transmitted to the OAL. Rather, the parties advised that a complaint was not filed with the Commission until September 2023, approximately five months after the Board issued its resolution authorizing its President to file ethics charges. Thus, similar to Castriotta, the Board publicly announced that it found that petitioner engaged in wrongdoing but did not refer the matter to the Commission, thus creating de facto discipline for a violation of the ethics code, which is impermissible.

For these reasons, I **CONCLUDE** that the Board's resolution was ultra vires in that it amounted to an unauthorized discipline of petitioner under the Code. And, as the Commissioner stated in Castriotta, because the Board exceeded its authority, the due process to which she was entitled need not be addressed here. In so concluding, I do not reach a determination regarding whether petitioner violated the Code.

Indemnification

N.J.S.A. 18A:12-20 provides for indemnification of members of boards of education:

Whenever a civil, administrative, criminal or quasi-criminal action or other legal proceeding has been or shall be brought against any person for any act or omission arising out of and in the course of the performance of his duties as a member of a board of education, and in the case of a criminal or quasi-criminal action such action results in final disposition in favor of such person, the board of education shall defray all costs of defending such action, including reasonable counsel fees and expenses, together with costs of appeal, if any, and shall save harmless and protect such person from any financial loss resulting therefrom. Indemnification for exemplary or punitive damages shall not be mandated and shall be governed by the standards and procedures set forth in N.J.S. 59:10-4. Any board of education may arrange for and maintain appropriate insurance to cover all such damages, losses and expenses.

The first question is whether the Board engaged in a proceeding that is covered by the indemnification statute. The Supreme Court addressed "administrative action" and observed that "[i]nformal agency action includes investigating, publicizing, planning, and

supervising a regulated industry.” In re Request for Solid Waste Util. Customer Lists, 106 N.J. 508, 519 (1987) (citation omitted); See also In re Atty. Gen. Law Enf’t Directive Nos. 2020-5 and 2020-6, 246 N.J. 462, 490 (2021) (“agencies can also act in a hybrid manner, with features of rulemaking and adjudication, or in an informal fashion, without a hearing”) (citation omitted). “The crucial questions are whether the fact finding involves a certain person or persons whose rights will be directly affected, and whether the subject matter at issue is susceptible to the receipt of evidence. The nature of the factual inquiries may be dispositive or assist in the disposition of the issue. A question posed in terms of general policy may clearly fall in the ‘no hearing’ category. Facts involved in resolution of a question of that type have sometimes been designated as legislative.” Cunningham v. Dep’t of Civil Serv., 69 N.J. 13, 22 (1975). If the agency’s inquiry addresses “facts about the parties and their activities” and the questions to be answered involve “who did what, where, how, why, with what motive and intent[,]” it is an adjudicative in nature. Ibid. Conversely, if the agency is “acting in a general capacity, such as rule making, so that the direct effect of its factual conclusions will be imposed on a class or group, as distinguished from some specific person or persons, then it may well be that such a hearing is not required.” Ibid.; See also Handlon v. Town of Belleville, 4 N.J. 99, 105 (1950) (the “quality of the act rather than the character of the agency exercising the authority is determinative of the nature of the power and the need for procedural due process”).

Citing Cunningham, the Castriotta court held that “the nature of the proceeding that led to the Board’s actions against petitioner” constituted a “legal proceeding” that was covered by the indemnification statute, N.J.S.A. 18A:12-20, because “it is clear to us that the Board was acting in a quasi-judicial capacity when it found petitioner in violation of the local code of conduct.” 427 N.J. Super. at 601, 603. It explained:

Before voting to censure petitioner the Board received the testimony of petitioner’s accusers, heard from petitioner herself, and ruled on arguments raised by petitioner’s counsel objecting to its authority to sanction petitioner. These are all core judicial functions. Thus, when the Board decided that petitioner had committed an ethical infraction warranting the sanction of censure, it was performing an adjudicatory act and functioning in a quasi-judicial capacity. This process

conformed in all material respects to a due process hearing and constitutes a “legal proceeding” under N.J.S.A. 18A:12-20.

[Id. at 594–595.]

Here, the record does not suggest that the Board conducted a full legal proceeding because it did not hear from petitioner or her attorney, and thus it did not weigh the petitioner’s evidence or arguments against the other evidence that it considered. However, it weighed the evidence that was presented to it and made a determination about petitioner’s actions. As noted in Castriotta, the “absence of pre-hearing discovery or the lack of the oath required under N.J.R.E. 603 may undermine the fairness or integrity of this ‘legal proceeding’ but do not, in any material way, alter its fundamental character.” Id. at 603. For these reasons, I **CONCLUDE** that the March 29, 2023, Board meeting was a “legal proceeding” to which the indemnification statute applies.

N.J.S.A. 18A:12-20 also requires that a legal proceeding must have been brought against a board member for “any act or omission arising out of and in the course of the performance of his duties as a member of a board of education.” The Supreme Court addressed this statutory prerequisite in Bower v. Bd. of Educ. of the City of E. Orange, 149 N.J. 416 (1997). It held that the statute requires “mere proof by a preponderance of the evidence that the act on which the charges are predicated arose out of and in the course of performance of the duties of employment.” Id. at 434; See also Waters v. Bd. of Educ. of Toms River, 2011 N.J. Super. Unpub. LEXIS 3083, *12 (December 22, 2011) (a board member seeking indemnification must show that “the cause of action: (1) arose out of the performance of his/her duties, and (2) occurred in the course of performing those duties”) (citing Lonky v. Bd. of Educ. of Bayonne, OAL Dkt. No. EDU 07205-05, Comm’r, slip op. at 3 (July 7, 2008), <http://lawlibrary.rutgers.edu/oal/search.shtml>).⁶ In Lonky, the ALJ observed that, because N.J.S.A. 18A:16-6 does not require a disposition

⁶ These cases addressed the application of N.J.S.A. 18A:16-6, a parallel statute that authorizes indemnification for the defense of a “civil or administrative action or other legal proceeding . . . brought against any person holding any office, position or employment under the jurisdiction of any board of education[.]” N.J.S.A. 18A:16-6 contains the same prerequisite as N.J.S.A. 18A:12-20: the proceeding must have been brought against the employee for an “act or omission arising out of and in the course of the performance of the duties of such office.” Ibid.

in favor of the employee, “there is an entitlement to indemnification if the sole criteria for satisfying the statute has been met by showing that the employee was performing the job she was hired for when the act occurred.” EDU 07205-05 at *3–4.

Here, petitioner seems to argue that she was performing her Board member duties because she was required to attend the meeting during which the Board conducted its “trial.” Pet’r’s Reply Br. at 7–8. “Courts have consistently held that board members sued ‘by reason of such membership’ are entitled to indemnification.” Id. at 8. The cases she cites do not support this position. Rather, they held that the indemnification statute was intended to “make manifest the implied power or boards of education to provide for the legal defense of a member of the board who is sued individually for some action taken by him in furtherance of his prescribed duties.” Errington v. Mansfield Twp. Bd. of Educ., 100 N.J. Super 130, 138 (App. Div. 1968). The other cases cited by petitioner, Jones v. Kolbeck, 119 N.J. Super 299 (App. Div. 1972) and Sudura v. Jersey City Bd. of Educ., 167 N.J. Super 331 (Law. Div. 1979), held that members of boards of education may be indemnified when defending suits challenging their memberships. The courts held that they were entitled to be indemnified because they were defending their right to perform as board members. This is distinct from the defense of an action that is unrelated to the performance of board member duties.

The Board seemingly made two arguments with respect to this prerequisite to indemnification. In its cross-motion for summary decision, it argued that petitioner is not entitled to indemnification because its resolution and meeting “stem from petitioner’s alleged ‘inappropriate comments and use of social media,’” which are “wholly unrelated” to her role as a Board member, “except for the mere fact that she is a sitting Board member.” Resp’t’s Br. at 14. During oral argument on the cross-motions, the Board seemed to reverse its position on this question, apparently in response to joint stipulation number eighteen, which provided, “All such Board actions conducted against Mrs. Petersen arose out of and in her role as a member of the Board.” As noted, this is a legal conclusion. Courts are “not bound by the concession or agreement of counsel as to how the statute is to be interpreted.” Tibbs v. Boemi, 109 N.J. Super. 200, 204 (App. Div.), aff’d o.b., 55 N.J. 531, 263 A.2d 785 (1970); See also 73 Am. Jur. 2d Stipulations § 4 (“Parties to an action may not stipulate to legal conclusions to be reached by the court”).

The issue is whether the Board's proceeding concerned petitioner's exercise of her duties as a Board member. Cases that have addressed whether a board member's social media posts violate the Code are instructive here. If "the speech in question does relate to the business of the Board and/or its operations, it may then be reasonable for the reader to perceive the speech as being offered in an official capacity and pursuant to his or her official duties, provided there is a sufficient nexus between the individual's social media page and his or her role/membership on the Board." Donnerstag v. Koenig, 481 N.J. Super. 291, 307–308 (App. Div. 2025) (quoting Aziz v. Nikitinsky, SEC No. C-56-22, slip op. at 8 (Oct. 17, 2022)). Here, there is no evidence in the record of a nexus between the social media posts and petitioner's exercise of her duties as a Board member. The Joint Stipulation of Facts does not address this. Moreover, petitioner asserted in her verified petition that the social media posts at issue were posted anonymously, and she did not assert that she authored them. Consequently, there is no evidence in the record connecting petitioner to the social media posts.

Without more, the only rationale for indemnification is petitioner's status as a Board member. If this were sufficient, the statutory prerequisite would be meaningless. Clearly, "legislation should be interpreted so that, if possible, full force and effect is given to every sentence, clause and word thereof." Oldfield v. New Jersey Realty Co., 1 N.J. 63, 68 (1948). As noted above, the Supreme Court has underscored that "the act on which the charges are predicated [must arise] out of and in the course of performance of the duties of employment," and petitioner has the burden of proving by a preponderance of the evidence that she is entitled to indemnification. Bower, 149 N.J. at 434. Accordingly, because there is insufficient evidence showing that the Board's proceeding concerned petitioner's performance of her duties as a Board member, I **CONCLUDE** that she has not demonstrated that she is entitled to indemnification of her legal fees and costs.

ORDER

I **ORDER** that petitioner's motion is **GRANTED** with respect to her claim that the Board's resolution was ultra vires in that it amounted to an unauthorized discipline of

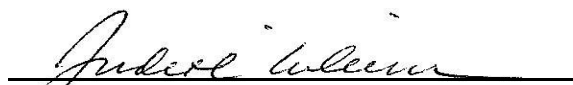
petitioner under the Code. I further **ORDER** that respondent's motion is **GRANTED** with respect to petitioner's ineligibility for indemnification. All other aspects of the parties' motions are **DENIED**.

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.

October 31, 2025

DATE


JUDITH LIEBERMAN, ALJ

Date Received at Agency:

October 31, 2025

Date Mailed to Parties:

JL/mg

APPENDIX

Exhibits

Joint Exhibits:

- J-A Executive Session Minutes, March 29, 2023
- J-B Undated Resolution

For petitioner:

- P-1 District Policy 9130