

RICHARD PARISI AND MARSHA PARISI,	:	
	:	
PETITIONERS,	:	
	:	
V.	:	COMMISSIONER OF EDUCATION
	:	
BOARD OF EDUCATION OF THE TOWNSHIP OF SADDLE BROOK, BERGEN COUNTY,	:	DECISION
	:	
RESPONDENT.	:	
_____	:	

SYNOPSIS

Petitioners alleged the Board failed to address their complaints concerning a school custodian. They contended that the Board did not respond to their written complaint, did not investigate their complaint, and denied them the minutes of a meeting at which there was a discussion which led to the denial of their request that the Board reimburse them for legal fees. The Board moved for summary decision, which was in part a motion to dismiss for lack of jurisdiction.

The ALJ concluded that under the circumstances, the portions of the petition concerning petitioners' complaint to the Board and the investigation of the situation should be dismissed for failure to state a claim upon which relief might be granted. The ALJ concluded that the portion of the petition related to petitioners' request for minutes of meetings should be dismissed for lack of jurisdiction. Likewise, the portion of the petition related to reimbursement of legal fees should be dismissed for lack of jurisdiction.

The Commissioner adopted findings and determination in Initial Decision as his own with clarification. The Commissioner concurred that the matter was properly dismissed, in that petitioners failed to state a claim upon which relief could be granted, although the Commissioner admonished the Board for lack of diligence in failing to respond to petitioners' written complaint. Moreover, the Commissioner agreed that he is without the authority to order reimbursement for legal costs. The Commissioner noted that the record did not indicate whether the custodian was a tenured employee. If he was tenured, petitioners failed to assert that the Board erred in not certifying tenure charges to the Commissioner. If he was not tenured, then any disciplinary action taken by the Board against him was not within the scope of the Commissioner's jurisdiction. There being no viable school claim before the Commissioner, the ALJ correctly concluded that the Commissioner could not reach to petitioners' ancillary claims which arise under the Open Public Meetings Act and the Right to Know Law.

January 3, 2000

RICHARD PARISI AND MARSHA PARISI, :  
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The record of this matter and the Initial Decision of the Office of Administrative Law have been reviewed. The parties did not file exceptions.

Upon careful and independent review of the record, the Commissioner concurs that this matter is properly dismissed, in that petitioners fail to state a claim upon which relief can be granted.<sup>1</sup> First, as the Administrative Law Judge (ALJ) noted, petitioners' request for reimbursement of legal fees does not arise under the school laws, so that the Commissioner is without the authority to order reimbursement to petitioners for such costs.

Further, petitioners demand reasons why the Board failed to respond to their written complaint, pursuant to Board Policy No. 9130, which establishes procedures for addressing written complaints and grievances presented by the public. Although the Commissioner notes that the record does support petitioners' claim, and the Board is hereby reminded of the need to comply with its own

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<sup>1</sup> Petitioners request the following relief: "1. Reason why I never received a respond [sic] to written complaint. 2. Why I never received a hearing or a [sic] investigation report on your findings. 3. What steps are being taking [sic] for the safety of my family. 4. The minutes to all private meetings that my name or wife [sic] name was mention [sic], including why you feel you are not reasonable [sic] for my attorney bill. 5. Reimburse Parisi Family \$1,000 for legal fees." (Petition of Appeal)

policies,<sup>2</sup> at this point in the proceedings, there is no meaningful relief which the Commissioner may grant petitioners as a result.

Additionally, the Commissioner finds that the record does not indicate whether Mr. Moscatelli is a tenured employee. To the extent that he *is* tenured, the Commissioner observes that petitioners do not claim that they brought charges against Mr. Moscatelli pursuant to *N.J.S.A. 6-11*. Had they so alleged, and thereby contended that the Board considered the charges and erred in failing to certify them to the Commissioner, such a claim would properly be before the Commissioner, contrary to the suggestion of the ALJ at page 6 of the Initial Decision. *See Rosa Astacio-Borja v. Board of Education of the Passaic County Technical-Vocational High School District, Passaic County*, Commissioner Decision March 30, 1998. If Mr. Moscatelli *is not* a tenured employee, then any disciplinary action taken by the Board against him is not within the scope of the Commissioner's jurisdiction.

Finally, there being no viable school law claim before the Commissioner, the ALJ correctly concluded that the Commissioner cannot reach to petitioners' ancillary claims which arise under the Open Public Meetings Act and the Right to Know Law.

Accordingly, the Initial Decision is adopted for the reasons expressed therein and clarified above. The Petition of Appeal is dismissed.<sup>3</sup>

IT IS SO ORDERED.

COMMISSIONER OF EDUCATION

January 3, 2000

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<sup>2</sup> The policy states, *inter alia*, that "[a] matter that cannot be resolved informally may be appealed at successive levels of authority, up to and including the Board of Education. \*\*\* The complaint and its immediate resolution will be reduced to writing at the first and at each successive level of appeal. \*\*\* A reasonable period of time, not to exceed thirty calendar days, will be permitted for the filing of an appeal in writing at each successive level. A decision at each level of appeal must be rendered in writing no later than thirty calendar days after the appeal is filed." (Certification in Support of Motion for Summary Decision at Exhibit C.)

<sup>3</sup> This decision, as the Commissioner's final determination in the instant matter, may be appealed to the State Board of Education pursuant to *N.J.S.A. 18A:6-27 et seq.* and *N.J.A.C. 6:2-1.1 et seq.*, within 30 days of its filing. Commissioner decisions are deemed filed three days after the date of mailing to the parties.