

ERIC P. BROTHERS AND WILLS,	:	
O'NEILL & MELLK,	:	
	:	
PETITIONERS,	:	
	:	
V.	:	COMMISSIONER OF EDUCATION
	:	
BOARD OF EDUCATION OF THE	:	DECISION
BOROUGH OF BOUND BROOK,	:	
SOMERSET COUNTY,	:	
	:	
RESPONDENT.	:	
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SYNOPSIS

Petitioner, an English, journalism and drama teacher, and his law firm sought payment from respondent Board for legal fees incurred by the teacher defending himself against a criminal harassment charge brought by a student. The Board contended the acts underlying the criminal charge did not arise out of and in the course of the performance of teaching duties.

The ALJ found that petitioner's behavior was not professionally appropriate. The ALJ concluded that the criminal charges specified in the complaint did not arise out of and in the course of the performance of petitioner's duties as a teacher. The ALJ concluded that petitioner was not entitled to reimbursement from respondent Board for the course of defending against the criminal proceedings subsequent to the complaint.

The Commissioner noted that petitioner had not satisfied the requisite legal standard which would entitle him to indemnification of his legal fees and expenses pursuant to *N.J.S.A.* 18A:16-6.1. The Commissioner adopted the findings and determination in the Initial Decision as his own.

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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OAL DKT. NO. EDU 8515-01  
AGENCY DKT. NO. 446-10/01

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The record of this matter and the Initial Decision of the Office of Administrative Law (OAL) have been reviewed. Petitioner's exceptions, filed on December 6, 2002 in response to an Initial Decision mailed on November 20, 2002, were untimely, pursuant to *N.J.A.C.* 1:1-18.4, and are, therefore, not considered herein.

Upon careful and independent review of the record, the Commissioner is in accord with the Administrative Law Judge's conclusion that the within petitioner is not entitled to indemnification for legal fees and expenses incurred in the defense of criminal charges alleging harassment of a student. In so determining, the Commissioner notes that *N.J.S.A.* 18A:16-6.1 requires a board to reimburse its employees for counsel fees and expenses incurred in defending against certain criminal actions. If the requisite statutory standard is satisfied, such indemnification is mandatory. *N.J.S.A.* 18A:16-6.1, read in conjunction with the complementary provisions of the immediately preceding statutory section, *N.J.S.A.* 18A:16-6, sets forth a two-pronged test for determining whether board employees are entitled to indemnification in this regard, *i.e.*, 1) the underlying criminal action must be dismissed or result in a final disposition in

favor of the employee **and** 2) any act or omission upon which the criminal charge is based must arise out of and during the course of the employee's performance of the duties and responsibilities of his position.

Here, there is no dispute that the first prong of the requisite test was satisfied by the Superior Court's reversal of petitioner's Municipal Court conviction. Thus, the remaining issue is whether the underlying criminal charges arose within the legitimate scope of petitioner's teaching duties. A reasoned reading of the record here, including the transcript of the Municipal Court hearing,<sup>1</sup> which provides evidence with respect to the specific conduct of petitioner which formed the basis of the criminal charges brought against him,<sup>2</sup> compels the Commissioner to conclude that it cannot credibly be argued that such actions of petitioner *arose out of* the performance of the duties and responsibilities of his employment as a high school English, journalism and drama teacher. *See Scirrotto v. Warren Hills Board of Education*, 272 N.J. Super. 391 (App. Div. 1994). Consequently, petitioner has not satisfied the requisite legal standard which would serve to entitle him to indemnification of his legal fees and expenses pursuant to *N.J.S.A.* 18A:16-6.1.

Accordingly, the Initial Decision of the OAL is adopted for the reasons stated therein and the instant Petition of Appeal is dismissed.

IT IS SO ORDERED.<sup>3</sup>

COMMISSIONER OF EDUCATION

Date of Decision: January 3, 2003

Date of Mailing: January 3, 2003

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<sup>1</sup> Hearing was conducted on November 16, 2000 and November 20, 2000 in Bound Brook Municipal Court, Somerset County.

<sup>2</sup> Contrast *Bower, supra*.

<sup>3</sup> This decision, as the Commissioner's final determination, 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.* 6A:4-1.1 *et seq.* Commissioner decisions are deemed filed three days after the date of mailing to the parties.