

#258-05 (No OAL Decision)

F.R., on behalf of minor child, M.R., :
PETITIONER, :
V. : COMMISSIONER OF EDUCATION
BOARD OF EDUCATION OF THE TOWNSHIP : DECISION
OF MONTVILLE, MORRIS COUNTY, :
RESPONDENT. :
_____ :

SYNOPSIS

Petitioner alleged that the principal – who is not named as a party in this matter -- of a Montville elementary school violated school district policies and humiliated his son, M.R., by disciplining him for selling merchandise in school by confiscating the money he collected from selling bracelets, accusing M.R. of “ripping off” his classmates and the cancer foundation, parading M.R. around to each classroom, and sending a public letter to each fifth grade parent. Petitioner sought: an apology from the principal; monetary compensation for slanderous remarks; a letter to each fifth grade parent acknowledging that the principal’s letter about this matter sent previously was an overreaction; and “...legal fees and such other relief as the Court may deem fair and equitable.”

Respondent Board filed a Motion to Dismiss with prejudice, arguing that the Commissioner lacks jurisdiction to award the relief requested by the petitioner in this matter. Furthermore, the Board disputes the characterizations set forth in the petition and claims that any actions taken by the principal were reasonable and appropriate.

Upon a thorough review of the parties’ submissions, the Commissioner determined to grant the Board’s Motion to Dismiss, based on lack of jurisdiction. In so deciding, he emphasizes that: applicable statute and regulation place public school personnel issues within the purview of the local board of education; the allegations giving rise to the request for money damages are based in tort law, over which the Commissioner has no jurisdiction; in the absence of express statutory authority to award damages, monetary sanctions to compensate for damages, or legal fees, the Commissioner may not direct that petitioner be awarded such relief. Accordingly, the petition in this matter is dismissed, with prejudice.

<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>

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 RESPONDENT. :
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For Petitioner, John G. Geppert, Jr., Esq. (Wiley, Malehorn & Sirota)

For Respondent, Marc H. Zitomer, Esq. (Schwartz, Simon, Edelstein, Celso & Kessler)

This matter was initiated by way of the filing of a Petition of Appeal on February 14, 2005 wherein petitioner alleges that the principal¹ of a Montville elementary school violated school district policies and humiliated his son when she disciplined him for selling merchandise in school by confiscating the money he collected from selling bracelets, accusing his son of “ripping off” his classmates and the cancer foundation, parading his son around to each classroom and sending a public letter to each fifth grade parent. (Petition of Appeal at 2-3) The relief that petitioner seeks is:

“that [the principal] apologize to M.R. for falsely accusing him of ‘ripping off’ the cancer foundation and for selling illegal merchandise; the money seized from M.R. be returned to him to compensate for the slanderous remarks by [the principal] causing depreciation of his character; a written letter be sent to the parents of all fifth graders at the Hilldale School stating [the principal]’s letter of November 19, 2004 referring to the cancer foundation was an overreaction; and legal fees and such other relief as the Court may deem fair and equitable. (*Id.* at 6)

The Board filed its Answer on March 7, 2005 admitting that the principal had confiscated the money M.R. had collected and that a letter had been sent to parents, but denying petitioner’s allegations

¹ It is noted that the principal is not a named party in this matter.

that the principal had taken action to humiliate M.R. or that any Board policies had been violated. (Board's Answer at 2) The Board asserted as affirmative defenses, *inter alia*, that the petition failed to state a claim upon which relief may be granted and that the Commissioner lacks jurisdiction to award the requested relief. (*Id.* at 3)

By letter of March 11, 2005, the Director of the Bureau of Controversies and Disputes notified the parties that the Commissioner would exercise his discretionary authority under *N.J.A.C.* 6A:3-1.12 to entertain a motion with respect to the Board's claims that the petition fails to state a claim upon which relief may be granted, and that the Commissioner lacks jurisdiction to award the requested relief in that these are threshold issues which appear to have merit. Accordingly, a briefing schedule was established to entertain a motion by the Board.

On April 29, 2005, the Board filed a Motion to Dismiss the petition in this matter with prejudice. In its motion, the Board notes that it adamantly disputes petitioner's characterization of the discipline, if any, imposed upon M.R. as set forth in the petition, and claims that any actions actually taken by the principal were reasonable and appropriate. (Motion to Dismiss at 2) The Board states, however, that for the limited purpose of its motion, even assuming, *arguendo*, that the facts as alleged by petitioner are true, the petition nevertheless must be dismissed because the Commissioner lacks jurisdiction to award the relief requested by petitioner. (*Id.* at 2-3)

In this regard, the Board points out that *N.J.S.A.* 18A:11-1(c) vests the power to control and regulate the conduct of public school employees exclusively in local boards of education, and the Board submits that ordering the principal, who is not named in this action, to apologize and to circulate a letter to all fifth-grade parents stating that she overreacted is clearly a disciplinary employment action.² (*Id.* at 3-4) Accordingly, in that there is no statutory authority for the Commissioner to order an employee of a public school district to tender an apology to students, parents or anyone else, and no statutory authority for the Commissioner to impose discipline on employees of a local board of education, with the exception of

² The Board observes that it is unclear whether petitioner is requesting that this letter be written by the principal or some other employee, but that, regardless, there is no statutory authority for the Commissioner to order anyone to write such a letter. (*Id.* at 5)

removal or reduction in salary of tenured teaching staff members in the course of tenure proceedings, the Board argues, the Commissioner may not grant the relief petitioner seeks. (*Id.* at 4-5)

Moreover, citing *Montagna v. Bd. of Ed. of Twp. of Belleville*, 97 N.J.A.R.2d (EDU) 46 and *Deborah E. Ciambrone v. Gerald Witty and the Board of Education of the Borough of Bloomingdale, Passaic County*, decided by the State Board October 6, 2004, the Board contends that the Commissioner does not have jurisdiction to award monetary damages as compensation for allegedly slanderous statements made by the principal as the allegations giving rise to this requested relief are based in tort law, an area of law over which the Commissioner has no jurisdiction whatsoever. (*Id.* at 6) In further support of its argument, the Board points out that it has repeatedly been held that the Commissioner lacks jurisdiction to award money damages absent statutory authority to do so and that the Commissioner's authority to award money damages is limited strictly to lost earnings of an employee or restoring an increment which has been improperly withheld. (*Id.* at 7-8) Finally, the Board contends that it is well-established that the Commissioner lacks jurisdiction to award attorneys' fees or legal costs. (*Id.* at 8)

In response, petitioner argues that jurisdiction to hear this matter arises from N.J.S.A.18A:6-9, which gives the Commissioner jurisdiction to hear and determine all controversies and disputes arising under the schools laws. (Petitioner's Response to the Board's Motion at 6) Petitioner further asserts that the provisions for oversight and discipline of students in the public schools, N.J.S.A. 18A:25-2, N.J.S.A. 18A:37-1, and N.J.S.A. 18A:27-2(b) and (e), provide jurisdiction for the Commissioner to hear this matter, arguing that petitioner has alleged that the Board acted arbitrarily and capriciously in imposing discipline on M.R. and that M.R. was not afforded the due process to which he was entitled under the Board's policy. (*Id.* at 6-7) Petitioner also asserts that the principal's handling of this matter was contrary to the provisions of N.J.S.A. 18A:37-13 *et seq.*, which prohibit harassment, intimidation and bullying and that the Board failed to adequately address the harassment, intimidation and bullying of M.R. by his school principal through the policies which it is required to maintain, pursuant to N.J.S.A. 18A:37-15. Moreover, pointing to *G.W.S., on behalf of minor child, A.F.S. v. William Petrino, Superintendent, and Rahway Board of Education, Union County*, decided by the Commissioner

November 29, 1999 and *R.A.M. v. Tabernacle Twp. Board of Education*, 94 N.J.A.R.2d (EDU) 573, petitioner asserts that the Commissioner has jurisdiction to review allegations involving local board of education policies. (*Id.* at 8)

Moreover, petitioner notes that he is appealing the decision of a board of education and that the Commissioner has the power to determine whether a disputed local decision by a board is improper as a matter of law, whether the evidence sustains the factual conclusions reached on the local level and whether there was a reasonable basis for the decision. (*Id.* at 9-10) Thus, petitioner argues, the Commissioner has jurisdiction to hear this matter under *N.J.A.C.* 6A:3-1.3(d) -- the regulation governing appeals to the Commissioner -- when the controversy arises under the school laws and involves an appeal of a decision by the board of education. (*Id.* at 10) Petitioner further submits that any ancillary matters related to the issues arising under the school laws are also within the Commissioner's jurisdiction, as in the present matter wherein a principal humiliated an elementary student and the Board determined not to hear the matter or take any action.³ (*Id.* at 10-11)

Upon a thorough review of the parties' submissions,⁴ the Commissioner has determined to grant the Board's Motion to Dismiss the within petition. In so concluding, the Commissioner points out that, even assuming, *arguendo*, all of petitioner's allegations to be true, the Commissioner lacks the authority to award any of the requested relief.

Specifically, petitioner seeks an order requiring that the principal apologize to M.R. for falsely accusing him, and that a letter be sent to all fifth-grade parents stating that the principal's letter was an overreaction. In accordance with applicable statute and regulations, personnel issues within the public schools are within the purview of the local board of education. See, *e.g.*, *N.J.S.A.* 18A:11-1(c), *N.J.S.A.* 18A:25-29 *et seq.*, and *N.J.A.C.* 6:3-4 *et seq.* The mere fact that a dispute involves a principal

³ The petition states that "[p]etitioners have contacted the Board of Education, however, the Board has neglected to respond to their claims" (Petition of Appeal at 6, No. 13), a claim which is denied by the Board (Answer at 2, No. 13).

⁴ The Commissioner notes that on May 17, 2005, the Board filed an additional submission not provided for in the briefing schedule established for consideration of the Board's Motion to Dismiss. In that the Board did not make application for the filing of additional arguments, and, thus, permission to file the additional brief was not granted, the May 17, 2005 submission was not considered in making this determination.

does not confer jurisdiction upon the Commissioner, nor can an alleged violation involving the treatment of others with dignity and respect be permitted to survive as an independent cause of action where the relief sought by a petitioner is beyond the Commissioner's authority to grant. The Commissioner of Education becomes involved in personnel issues in only two instances: first, if tenure charges have been certified to the Commissioner by a local board of education; and second, if person filing tenure charges at the local level appeals a board's decision not to certify such charges to the Commissioner. As such, the Commissioner does not have the authority to award the relief sought.

With respect to petitioner's request that "the money seized from M.R. be returned to him to compensate for the slanderous remarks by [the principal] causing deprecation of his character," the Commissioner does not have jurisdiction to award monetary damages as compensation for allegedly slanderous statements made by the principal because the allegations giving rise to this requested relief are based in tort law, an area of law over which the Commissioner has no jurisdiction. Such action is properly brought before the New Jersey Superior Court. See *Montagna, supra*; and *Ciambrone, supra*. Moreover, it is well-established that the Commissioner lacks authority to award money damages or monetary sanctions that constitute compensation for "damages" other than lost earnings or restoring an increment which has been improperly withheld. See *Scott and Yarnall v. Bd. Of Educ. of the City of Trenton*, decided by the Commissioner September 30, 2002, *affirmed* St. Bd. June 2, 2004 (*modified on other grounds*); *Dunn v. Elizabeth Bd. of Educ.*, 96 N.J.A.R.2d (EDU) 279, 281 (*Citing McLean v. Bd. of Ed. of Glen Ridge, 1977 S.L.D. 311, 315; Smith v. Bd. of Ed. of Hamilton, OAL Dkt. No. EDU 5468-87 adopted in part and rejected in part on other grounds, decided by the Commissioner April 21, 1988*) In the absence of express statutory authority to award damages or monetary "sanctions" to compensate for damages, the Commissioner may not direct that petitioner be compensated for any alleged damages in this matter.

Finally, with respect to petitioner's request for legal fees, in the absence of express statutory authority to award legal fees, the Commissioner may not direct that petitioner be compensated for legal fees in this matter. See *Hinfey v. Matawan Regional Board of Education, 77 N.J. 514, 525 (1978)*; *B.B., on behalf of her son, L.C. v. Board of Education of the Union County Regional High School District*

No. 1 and Donald Merachnik, Superintendent of Schools, Union County, 1987 S.L.D. 323; Balsley v. North Hunterdon Bd. of Educ., 117 N.J. 434 (1990); and State Dept. of Environ. Protect. v. Ventron Corp., 94 N.J. 473 (1983).

Accordingly, for the reasons set forth above, the Commissioner has determined to grant the Board's Motion to Dismiss the petition in this matter, with prejudice, as it seeks relief which the Commissioner is not empowered to grant.

IT IS SO ORDERED.⁵

COMMISSIONER OF EDUCATION

Date of Decision: July 21, 2005

Date of Mailing: July 21, 2005

⁵ This decision 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.*