

#103-13 (OAL Decision: Not yet available online)

THOMAS TAYLOR, :

PETITIONER, :

V. : COMMISSIONER OF EDUCATION

BOARD OF EDUCATION OF THE BOROUGH : DECISION
 OF WASHINGTON, WARREN COUNTY AND
 LANCE ROZSA, SUPERINTENDENT :

RESPONDENT. :

SYNOPSIS

Petitioner alleged a violation of the Code of Ethics for School Board Members, but filed the complaint with the Commissioner of Education instead of the School Ethics Commission. The appeal contended that the respondents failed to honor petitioner’s request for anonymity after he contacted the Board to advise that two students from the same family were attending school in the district when they were not residents. Petitioner requested reimbursement of legal fees in the amount of \$4,387.65 which were incurred in defending himself and his wife in municipal court, as well as a formal apology and action on the part of the Board to rectify the alleged residency fraud. Respondents filed a motion to dismiss together with a certification from their attorney asserting that the petitioner failed to state a claim upon which relief can be granted.

The ALJ found, *inter alia*, that: petitioner contended that the respondents are in violation of the Code of Ethics for School Board Members, *N.J.S.A.* 18A:12-24.1(g); the Code of Ethics applies only to elected or appointed school board members, not to school administrators, and – more significantly – violations of the code are solely within the jurisdiction of the School Ethics Commission (SEC); any person who seeks to have a school board member disciplined for misconduct under the Code of Ethics must use the statutory mechanism set forth in *N.J.S.A.* 18A:12-29, including submission of the complaint on a prescribed form; after review of the complaint, the SEC must decide – pursuant to *N.J.S.A.* 18A:12-29(b) – whether probable cause exists to credit the allegations; if so, the case is then referred to the OAL; and if a violation of the code is ultimately found, reprimand, censure, suspension and removal are the only sanctions available to the SEC, pursuant to *N.J.S.A.* 18A:12-29(c). In this case, the SEC has not yet had the opportunity to decide whether probable cause exists to credit petitioner’s allegations, and has not referred the case to the OAL. Accordingly, the ALJ granted the respondents’ motion to dismiss.

The Commissioner adopted the Initial Decision as the final decision in this matter as he concurred with the ALJ that the Board’s motion to dismiss is appropriately granted because the Commissioner lacks subject matter jurisdiction to adjudicate the within controversy.

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.

March 19, 2013

OAL DKT. NO. EDU 4803-12
AGENCY DKT. NO. 69-3/12

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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 in accordance with the provisions of *N.J.A.C.* 1:1-18.4 – were considered by the Commissioner in reaching his determination herein.

Upon review, the Commissioner concurs with the Administrative Law Judge that the Board’s motion to dismiss is appropriately granted as the Commissioner lacks subject matter jurisdiction to adjudicate the within controversy.

Accordingly, the recommended decision of the OAL is adopted for the reasons stated therein and the instant petition of appeal is hereby dismissed.

IT IS SO ORDERED.*

COMMISSIONER OF EDUCATION

Date of Decision: March 19, 2013

Date of Mailing: March 20, 2013

* This decision may be appealed to the Appellate Division of the Superior Court pursuant to *P.L.* 2008, *c.* 36.