

EDU # 9202-00
C # 143-01
SB # 17-01

DEBORAH E. CIAMBRONE, :
PETITIONER-APPELLANT, : STATE BOARD OF EDUCATION
V. : DECISION
GERALD WITTY AND THE BOARD OF :
EDUCATION OF THE BOROUGH OF :
BLOOMINGDALE, PASSAIC COUNTY, :
RESPONDENTS-RESPONDENTS. :

Decided by the Assistant Commissioner of Education, May 7, 2001

For the Petitioner-Appellant, Bucceri & Pincus (Gregory T. Syrek, Esq., of Counsel)

For the Respondents-Respondents, Porzio, Bromberg & Newman (Vito A. Gagliardi, Jr., Esq., of Counsel)

Deborah E. Ciambrone (hereinafter "petitioner"), a teaching staff member, filed a petition of appeal with the Commissioner of Education alleging that respondent Gerald Witty, a member of the Board of Education of the Borough of Bloomingdale (hereinafter "Board"), had abused his authority by accessing her personnel records and that the Board's failure to sanction Witty for such conduct was arbitrary and capricious. More specifically, the petitioner alleged that she had learned in May 2000 that Witty had reviewed her personnel file at the request of a parent and that he had conveyed information regarding his review to the parent. The petitioner indicated that at the time

Witty reviewed her file, there were not any employment actions pending that would permit him access to such confidential information.

The respondents filed a motion to dismiss the petition for untimeliness, failure to state a claim and lack of jurisdiction.

On March 21, 2001, an Administrative Law Judge (“ALJ”) recommended granting the respondents’ motion and dismissing the petition. Although rejecting the respondents’ contention that the petition was untimely, the ALJ concluded that the Commissioner did not have jurisdiction over the petitioner’s claims. With regard to the petitioner’s claim against Witty, the ALJ observed that a claim for violation of privacy did not arise under the school laws and that relief for any civil tort or constitutional violation must be sought in the appropriate forum. The ALJ rejected the petitioner’s argument that the Commissioner had jurisdiction to hear this dispute under his general supervisory powers, N.J.S.A. 18A:4-23. As for the petitioner’s claim against the Board, the ALJ could find no authority for the proposition that the Commissioner could order a district board to investigate an alleged civil tort or constitutional violation by one of its members.

On May 7, 2001, an Assistant Commissioner of Education, to whom this matter had been delegated by the Commissioner pursuant to N.J.S.A. 18A:4-34, adopted with clarification the conclusions of the ALJ and dismissed the petition. The Assistant Commissioner explained:

Initially, with respect to what petitioner categorizes as her “primary” claim and prayer for relief, i.e., a finding or declaration that Board Member Witty violated petitioner’s reasonable expectation of privacy with regard to her personnel record, the Assistant Commissioner concurs with the ALJ, and with the arguments advanced by respondents,

that such issue is not properly before the Commissioner and must be dismissed. Similarly, to the extent that petitioner is seeking a directive from the Commissioner that the Board must sanction or take action against one of its members, the Assistant Commissioner likewise agrees with the ALJ that, even assuming that the alleged conduct occurred as charged, a directive of the type sought by petitioner is outside the jurisdictional purview of the Commissioner and, therefore, this request must be dismissed.

However, to the extent that petitioner's claim arises under standards embodied in prior rulings of the Commissioner concerning the scope of an individual board member's authority, in his or her official capacity, to access personnel files, and to the extent that petitioner seeks as relief a directive that the Board herein ensure that access by individual Board members is restricted in accordance with those standards, the Assistant Commissioner agrees with petitioner that this matter is appropriately before the Commissioner. The Commissioner has previously determined that board member access to personnel files "should be strictly limited to those instances where the employee is being recommended for or subjected to an employment action requiring a vote of the Board or where access to personnel information is necessary for the performance of essential Board members duties." [Horner v. Kingsway Regional High School District Bd. of Ed., 1990 S.L.D. 752], at 766-67. Thus, it is clearly a board's responsibility to ensure that access by board members, in their individual capacity, is confined within established parameters, and the Assistant Commissioner so reminds the Board herein.

Assistant Commissioner's Decision, slip op. at 13-14.

The Assistant Commissioner reminded the Board of its "responsibility to take such actions as may be necessary to ensure compliance with the Commissioner's established parameters regarding the extent of board member access to district personnel files." Id. at 14. The petitioner filed the instant appeal to the State Board.

After a thorough review of the record, we affirm, as modified herein, the decision of the Assistant Commissioner to grant the respondents' motion to dismiss the petition.

For the reasons expressed by the ALJ and the Assistant Commissioner, we agree that the Commissioner did not have jurisdiction over the petitioner's claim that Witty had violated her privacy rights.¹

We also concur with the Assistant Commissioner's ultimate determination to dismiss the petitioner's claim against the Board. However, we modify the Assistant Commissioner's analysis. In her petition, the petitioner alleges that "[t]he Board's failure to take any action against Witty after it was advised of his improper conduct constitutes an abuse of its authority and violation of the petitioner's rights." Verified Petition of Appeal, at 3. According to the petitioner, the Board's counsel responded to her request for an investigation of Witty's actions "by stating that 'the administration has looked into this matter and is unable to ascertain the veracity of [the] allegations' but that 'Board members and the administrative staff have been re-instructed as to the confidentiality due to personnel records.'" *Id.* at 2-3. The petitioner sought, *inter alia*, a "[f]inding and declaration that the Board's failure to take action upon being informed of Witty's inappropriate actions constitute an abuse of its discretion and authority." *Id.* at 4.

Initially, we conclude that this agency does have jurisdiction over the petitioner's claim that the Board acted in a manner that was arbitrary and capricious when it failed to exercise its authority to take action against Witty. However, even accepting as true the facts alleged in the petition for purposes of the respondents' motion to dismiss, Smith v. City of Newark, 136 N.J. Super. 107, 112 (App. Div. 1975), *i.e.*, that Witty

¹ We note that, subsequent to the incident alleged herein, the Legislature amended the School Ethics Act, N.J.S.A. 18A:12-21 *et seq.*, to include a Code of Ethics for School Board Members, N.J.S.A. 18A:12-24-1. L.2001, c. 178, § 5, eff. July 26, 2001. Subsection (a) of that statute requires that school board members "uphold and enforce all laws, rules and regulations of the State Board of Education, and court orders pertaining to schools...." Thus, if Witty's alleged conduct had occurred subsequent to the adoption of that provision, it would have been actionable under the School Ethics Act.

accessed the petitioner's personnel record and conveyed information contained therein to a parent, we conclude that the petitioner has not provided any basis for a finding that the Board acted in a manner that was arbitrary or capricious in responding to that allegation.

The petitioner's claim against the Board is predicated on her contention that it failed to take appropriate action against Witty and that its failure to do so was arbitrary and capricious. In her brief in opposition to the respondents' motion to dismiss, the petitioner indicates that she is seeking "a determination of the Board's culpability in apparently condoning Witty's behavior." Brief in Opposition to Motion to Dismiss, at 14. Notwithstanding any wrongdoing by Witty, which, as previously stated, we have neither addressed nor determined herein, review of the papers reveals that the Board, through its counsel, informed the petitioner that it had investigated her allegation but was unable to ascertain its veracity. Counsel added that members of the Board and the administrative staff had been reinstructed on the confidentiality of personnel records. Thus, this is not a case in which the Board failed to take any action in response to the petitioner's charge.

It is well-established that when a local board acts within its authority, its decision is entitled to a presumption of correctness and will not be disturbed absent an affirmative showing that the decision was patently arbitrary, without rational basis or induced by improper motives. Kopera v. West Orange Bd. of Educ., 60 N.J. Super. 288, 294 (App. Div. 1960). The burden of demonstrating that an action was so deficient rests with the party challenging the decision. Id. at 297. Here, the petitioner does not challenge the veracity of the Board's response to her charge. Rather, she makes the

bald accusations that “the Board failed to investigate properly,” Brief in Opposition to Motion to Dismiss, at 11, and that “once notified of Witty’s inappropriate conduct, the Board failed to address his behavior in an appropriate fashion,” id. at 12. In the absence of any substantiation for the petitioner’s claims, we conclude that she has failed to provide any basis for a finding that the Board’s actions were arbitrary, capricious or unreasonable so as to withstand the respondents’ motion to dismiss the petition. The fact that the petitioner does not agree with the outcome of the Board’s investigation does not in itself render the Board’s conduct unreasonable.

Therefore, as modified herein, we affirm the decision of the Assistant Commissioner to dismiss the petition.

Attorney exceptions are noted.

October 6, 2004

Date of mailing _____