

BOARD OF EDUCATION OF THE : COMMISSIONER OF EDUCATION
TOWNSHIP OF CEDAR GROVE, :
ESSEX COUNTY : DECISION
PETITIONER, :
V. :
PHILIP TULLY, :
: RESPONDENT.
_____ :

SYNOPSIS

The Board of Education of the Township of Cedar Grove filed a Petition of Appeal, with request for emergent relief, seeking removal of Board member Philip Tully for alleged conflict of interest as the result of a Tort Claim Notice filed by respondent against the Board. Oral argument was presented in an emergent relief hearing in December 2006, after which the respondent was immediately suspended pending a full hearing on the merits. Subsequently, the Board filed a motion for summary decision, to which respondent did not respond.

The ALJ found that the respondent has an actual claim against the Board, which is expressly prohibited pursuant to *N.J.S.A. 18A:12-2*, and no facts exist to show that there is a genuine issue of material fact requiring further hearing in this matter. The ALJ concluded that respondent is disqualified from serving on the Board as a matter of law, and so ordered.

The Commissioner adopts the recommended order of the ALJ as the final decision in this matter, concurring with the ALJ that respondent is disqualified as a matter of law from serving on the petitioning Board of Education, in view of the conflict of interest created by his tort claim against the Board. Accordingly, the Commissioner ordered respondent removed as a member of the Cedar Grove Board of Education as of the date of this decision, and directed the County Superintendent to fill the resulting vacancy pursuant to *N.J.S.A. 18A:12-15a*.

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.

April 30, 2007

OAL DKT. NO. EDU 11663-06
AGENCY DKT. NO. 453-12/06

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The record of this matter and the Initial Decision of the Office of Administrative Law (OAL) have been reviewed. No exceptions were filed by the parties.

Upon review, the Commissioner concurs with the Administrative Law Judge that respondent is disqualified as a matter of law from serving on the petitioning Board of Education, in view of the conflict of interest created by his tort claim against the Board. *N.J.S.A. 18A:12-2; Berlin v. Lee, supra; Aldom v. Borough of Roseland*, 42 N.J. Super 495, 502 (App. Div. 1956); *S&L Associates, Inc. v. Washington Township*, 61 N.J. Super. 312, 329 (App. Div. 1960); *Board of Education of the Township of Holmdel, Monmouth County v. Stephen O'Connell*, 1990 S.L.D. 674; *Board of Education of the Township of Jackson, Ocean County v. Gustav Acevedo, II*, 92 N.J.A.R.2d 163; *Taliaferro vs. Hawthorne Board of Education*, 94 N.J.A.R.2d (EDU) 197; and *Board of Education of the Borough of Palmyra, Burlington County v. Robert Marinnie*, decided by the Commissioner June 8, 2005. See also, *Board of Education of the City of Sea Isle, Cape May County v. William J. Kennedy*, decided by the Commissioner June 30, 2005, affirmed State Board of Education January 4, 2006.

Accordingly, the Initial Decision of the OAL is adopted for the reasons expressed therein, and Phillip Tully – who has been suspended from service as a Board member since December 22, 2006, pursuant to the Commissioner’s Order on the Board’s Application for Emergent Relief – is hereby removed as a member of the Cedar Grove Township Board of Education as of the filing date of this decision. Pursuant to *N.J.S.A. 18A:12-15a*, the Essex County Superintendent of Schools is directed to fill the resulting vacancy for the remaining length of Mr. Tully’s term, which is due to expire upon the Board’s reorganization following the April 2008 annual school election.

IT IS SO ORDERED.*

COMMISSIONER OF EDUCATION

Date of Decision: April 30, 2007

Date of Mailing: April 30, 2007

* 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.*