

BOARD OF EDUCATION OF THE :
TOWNSHIP OF LACEY, OCEAN :
COUNTY, :

PETITIONER, : COMMISSIONER OF
EDUCATION :

V. : DECISION

MICHAEL J. KIRK, :

RESPONDENT. :

_____ :

SYNOPSIS

Petitioning Board alleged respondent Board member violated *N.J.S.A.* 18A:12-2 for conflict of interest. Board sought his removal.

ALJ ordered the question of the Board's authority to remove respondent be dismissed as moot as respondent was defeated at the polls. Citing *Fernandez*, the ALJ further determined that the Commissioner has held that administrative matters are not "civil" actions, for which indemnification can be granted. Thus, the ALJ denied respondent's application for indemnification.

Commissioner adopted findings and determination in initial decision as his own, noting that, absent authority from the Legislature to broaden the scope of the indemnification under the relevant statute, respondent may not be reimbursed for the defense of charges brought against him in an administrative forum.

JUNE 26, 1998

OAL DKT. NO. EDU 2686-97
AGENCY DKT. NO. 83-3/97

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The record of this matter and the initial decision of the Office of Administrative Law have been reviewed. No exceptions were filed by the parties.

Upon careful and independent review of the record in this matter, the Commissioner concurs with the ALJ that respondent is not entitled to indemnification of his legal fees and costs. Even assuming, *arguendo*, that the within action was brought against respondent “***for any act or omission arising out of and in the course of the performance of his duties as a member of [the Board],” *N.J.S.A.* 18A:12-20, and further assuming that the dismissal of the within petition for mootness constitutes a “final disposition in favor” of respondent, the Commissioner nevertheless finds that, absent authority from the Legislature to broaden the scope of the indemnification under the relevant statute herein, respondent may not be reimbursed for the defense of charges brought against him in an administrative forum. (*Fernandez, supra*, slip. op. at p. 7)

Accordingly, the initial decision of the ALJ is adopted for the reasons expressed therein. The Petition of Appeal is hereby dismissed as moot, and respondent's application for indemnification of legal fees and costs is denied.*

IT IS SO ORDERED.

COMMISSIONER OF EDUCATION

JUNE 26, 1998

* This decision, as the Commissioner's final determination in the instant matter, 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. 6:2-1.1 et seq.*, within 30 days of its filing. Commissioner decisions are deemed filed three days after the date of mailing to the parties.