

**New Jersey Commissioner of Education****Final Decision**

Board of Education of the City of Englewood,  
Bergen County,

Petitioner,

v.

Angela David,

Respondent.

**Synopsis**

The Englewood Board of Education filed a petition and motion for emergent relief, seeking the removal of the respondent from the Board based on an alleged conflict of interest pursuant to *N.J.S.A. 18A:12-2*. Respondent is also on the Board of Trustees of ESTEPNJ, Inc. (ESTEP), a nonprofit entity that filed an application for the use of one of the school district's facilities for a summer theater arts program in 2018. In May 2019, the Board initiated a lawsuit against ESTEP for failure to pay \$4,535 of the \$24,750 total rental cost for the facility, and a judgment was entered against ESTEP in that amount in November 2019. The Board alleged that respondent's interest in the judgment and total amount due and owing to the Board disqualifies respondent from membership on the Board. Respondent claimed that the motion for emergent relief was substantively and procedurally barred and sought dismissal of the petition as well as costs and attorney fees.

The ALJ found, *inter alia*, that: the Board demonstrated entitlement to emergent relief; ESTEP and the petitioning Board had adverse interests; respondent, as a member of ESTEP's Board of Trustees, must therefore be disqualified from membership on the Englewood Board of Education; and no further issues are left to be decided in this matter. Accordingly, the ALJ granted the Board's motion for emergent relief and ordered respondent suspended from her position on the Board; further, respondent's request for attorney fees and costs was denied.

Upon review, the Commissioner, *inter alia*, disagreed with the ALJ's findings and conclusion, and found instead that the Board's judgment against ESTEP does not create a disqualifying conflict of interest. In so doing, the Commissioner concluded that the inconsistent interests that can result in disqualification under *N.J.S.A. 18A:12-2* are limited to those listed in the statute, i.e., a contract with the board, or a claim *against* the Board. Here, the claim at issue is the *Board's* claim against ESTEP – a claim that does not meet the requirement of the statute. Accordingly, the Commissioner reversed the Initial Decision of the OAL. Respondent was not disqualified from membership on the board by virtue of *N.J.S.A. 18A:12-2* and may continue to serve in her position; however, her motion for legal fees and costs related to her defense herein was denied, as the Commissioner does not have the authority to award such fees.

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.

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OAL Dkt. No. EDU 05193-22

Agency Dkt. No. 156-6/22

## New Jersey Commissioner of Education

### Final Decision

Board of Education of the City of Englewood,  
Bergen County

Petitioner,

v.

Angela David,

Respondent.

The record of this matter, the Initial Decision of the Office of Administrative Law (OAL), the exceptions filed by respondent pursuant to *N.J.A.C. 1:1-18.4*, and the Board's reply thereto, have been reviewed and considered.

The Board filed a petition of appeal and motion for emergent relief, seeking the removal of respondent from the Board based on an alleged conflict of interest pursuant to *N.J.S.A. 18A:12-2*. Respondent is on the Board of Trustees of ESTEPNJ, Inc. (ESTEP), a nonprofit entity that filed an application for the use of one of the district's school facilities for a summer theater arts program in 2018. In May 2019, the Board initiated a lawsuit against ESTEP for failure to pay \$4,535 of the \$24,750 total rental cost for the facility. In November 2019, the Superior Court entered a judgment against ESTEP for that amount, plus court costs and attorney's fees; the judgment amount has since increased to \$5,831.87 due to interest and additional costs and

fees. The Board's petition alleged that respondent's interest in the judgment and total amount due and owing to the Board disqualifies respondent from membership on the Board.

Following submissions and oral argument, the ALJ concluded that the Board had demonstrated entitlement to emergent relief. The ALJ found that ESTEP and the Board had adverse interests and that respondent, as a trustee of ESTEP, was therefore disqualified from membership on the Board. The ALJ also found that there were no further issues left to be decided in this matter.

In a letter which was not expressly identified as exceptions, but which the Commissioner deems to be exceptions, respondent argues that this matter involves a political issue that is not proper for judicial review. Respondent states that she had no financial interest in ESTEP, which has not operated since 2018. Respondent contends that this matter has already been adjudicated in her favor when the School Ethics Commission ruled that a complaint against her related to ESTP was out of time, such that this matter is barred by the doctrines of res judicata and collateral estoppel. Finally, respondent argues that the petition is untimely because her involvement with ESTEP has been known to the Board for over two years.<sup>1</sup>

In its reply to petitioner's exceptions,<sup>2</sup> the Board argues that respondent has a disqualifying interest in the Board's claim, and that respondent's service as a member of the

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<sup>1</sup> Respondent also submitted a July 10, 2022 document removing her from the Board of Trustees of ESTEP. Pursuant to *N.J.A.C. 1:1-18.4(c)*, evidence not presented at the hearing shall not be submitted as part of an exception. Accordingly, neither this evidence, nor the Board's response thereto, was considered.

<sup>2</sup> The Board argues that respondent's letter does not comply with *N.J.A.C. 1:1-18.4* because it does not specify the findings of fact or conclusions of law to which exception is taken, propose alternative findings or conclusions, or set forth supporting reasons. The Commissioner notes the Board's argument, but nonetheless has determined to accept respondent's letter as her exceptions, with any deficiencies in the format of her filing going to the weight of her arguments, rather than the acceptance of the document as exceptions.

board of trustees of ESTEP places her in a position of competing loyalties between ESTEP and the Board. The Board also contends that respondent's res judicata and collateral estoppel arguments are without merit, because the issues raised in this matter have never been considered or decided in any other forum.

*N.J.S.A.* 18A:12-2 provides that a member of a board of education may not "be interested directly or indirectly in any contract with or claim against the board."<sup>3</sup> While the title of this provision is "Inconsistent interests or office prohibited," the title of the provision cannot expand the actual, plain language of the statute. The inconsistent interests that can result in disqualification are only those listed in the statute – a contract with the board, or a claim *against* the Board.<sup>4</sup> Here, the claim at issue is the *Board's* claim against ESTEP – a claim that does not meet the requirement of the statute.<sup>5</sup> Accordingly, the Commissioner concludes that the Board's judgment against ESTEP does not create a disqualifying conflict of interest.

The Commissioner notes that *N.J.S.A.* 18A:12-2 also prohibits a board member from being interested in a contract with the board. The petition alleges only that respondent "has a direct and/or indirect interest in the Board's claim that it is presently owed \$5,831.87" and that respondent's "interest in the judgment and total amount due and owing to the Board"

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<sup>3</sup> *N.J.S.A.* 18A:12-2 also prevents board members from holding certain other public offices, a provision that is not at issue here.

<sup>4</sup> The Commissioner notes that other types of conflicts may be violations of the School Ethics Act, *N.J.S.A.* 18A:12-24 *et seq.* However, the pending matter does not allege any violations of the School Ethics Act, nor would the Commissioner have jurisdiction to address those claims, as jurisdiction lies with the School Ethics Commission.

<sup>5</sup> The cases cited by the Board, where the Commissioner or court found that removal was appropriate, all involve board members who had monetary claims against the boards on which they served. *See Bd. of Educ. of City of Sea Isle v. Kennedy*, 196 N.J. 1 (2008); *Bd. of Educ. of Twp. of Barnegat v. Robert A. Houser*, Commissioner Decision No. 306-07, decided July 30, 2007; *Bd. of Educ. of Bor. of Hawthorne, Passaic Cty. v. Albert W. Taliaferro*, Commissioner Decision No. 328-93, decided Dec. 30, 1993; *Bd. of Educ. of Twp. of Jackson, Ocean Cty. v. Gustavo Acevedo, Jr.*, Commissioner Decision No. 22-92, decided Feb. 6, 1992.

disqualifies her from membership. Nonetheless, in the interest of completeness, the Commissioner will also address the portion of *N.J.S.A.* 18A:12-2 pertaining to contracts with the board. It is not clear to the Commissioner, based on the record, that there was a contract between ESTEP and the Board. However, even assuming that ESTEP's application to use school facilities and the Board's approval of that application created a contract, that contract has been fully concluded.<sup>6</sup> As such, respondent is not currently interested in a contract with the Board, and the Commissioner finds no basis in the statute or related case law to conclude that a past contract creates a current disqualifying interest.<sup>7</sup>

Accordingly, the Initial Decision is reversed. Petitioner is not disqualified from membership on the board by virtue of *N.J.S.A.* 18A:12-2 and may continue to serve in her position.<sup>8</sup>

IT IS SO ORDERED.<sup>9</sup>

  
ACTING COMMISSIONER OF EDUCATION

Date of Decision: August 15, 2022

Date of Mailing: August 17, 2022

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<sup>6</sup> There is no indication in the record that there is any ongoing business between the Board and ESTEP. Furthermore, to the extent that the payment owed pursuant to the (presumed) contract is outstanding, that amount has been litigated and entered as a judgment, such that there is no possible further business between the parties that is specific to the contract.

<sup>7</sup> In light of this conclusion, the Commissioner does not reach the issues of res judicata and collateral estoppel raised by respondent. However, the Commissioner does note that the School Ethics Commission adjudicates claims under the School Ethics Act and does not have jurisdiction to make determinations regarding disqualifying conflicts of interest pursuant to *N.J.S.A.* 18A:12-2.

<sup>8</sup> Respondent filed a cross-motion for legal fees and costs related to her defense of the petition of appeal. The Commissioner does not have the authority to award legal fees and costs and, therefore, the motion is denied.

<sup>9</sup> This decision may be appealed to the Appellate Division of the Superior Court pursuant to *N.J.S.A.* 18A:6-9.1. Under *N.J.Ct.R.* 2:4-1(b), a notice of appeal must be filed with the Appellate Division within 45 days from the date of mailing of this decision.



**State of New Jersey**  
OFFICE OF ADMINISTRATIVE LAW

**INITIAL DECISION**  
**ON MOTION SEEKING**  
**EMERGENT RELIEF AND ON**  
**MOTION SEEKING COSTS**  
**AND ATTORNEY'S FEES**

OAL DKT. NO. EDU 05193-22

AGENCY DKT. NO. 156-6/22

**BOARD OF EDUCATION OF THE CITY  
OF ENGLEWOOD, BERGEN COUNTY,**

Petitioner,

v.

**ANGELA DAVID,**

Respondent.

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**Perry L. Lattiboudere**, Esq., for Petitioner (Adams Gutierrez & Lattiboudere, LLC,  
attorneys)

**Eric V. Kleiner**, Esq., for Respondent

Record Closed: June 29, 2022

Decided: June 30, 2022

BEFORE: **JOHN P. SCOLLO**, ALJ:

## **STATEMENT OF THE CASE**

The Englewood Board of Education (“Petitioner” or “Englewood BOE” or “BOE”) seeks an Order for injunctive relief from the Commissioner of Education suspending a BOE member, Angela David (“A.D.”), from serving on the BOE pending the Commissioner’s determination of her qualifications under N.J.S.A. 18A:12-2 (the section captioned, “Inconsistent interests or office prohibited”) due to an outstanding monetary judgment obtained by the BOE against ESTEPNJ, Inc. ESTEPNJ, Inc. is a non-profit corporation on whose Board of Trustees A.D. has served since its incorporation. Respondent-A.D. claims that the emergent petition presently before the Tribunal is substantively and procedurally barred and she seeks a denial of the BOE’s petition as well as costs and attorney’s fees.

## **PROCEDURAL HISTORY**

On June 23, 2022, the BOE filed with the New Jersey Department of Education a “Motion for Emergent Relief pursuant to N.J.A.C. 6A:3-1.6” seeking an Order immediately suspending A.D. from serving as a member of the BOE pending the Commissioner’s determination of her qualifications under N.J.S.A. 18A: 12-2.

On June 24, 2022, A.D.’s counsel filed A.D. Opposition papers claiming that the BOE’s emergent petition is substantively barred and procedurally barred, and seeking costs and attorney’s fees incurred in this matter. A.D. supplemented her opposition on June 28, 2022.

On June 24, 2022 the N.J. Department of Education, Office of Controversies and Disputes transmitted this matter to the Office of Administrative Law, where it was filed on June 24, 2022 as a contested case.

## **DISCUSSION AND FINDINGS OF FACT**

The Office of Controversies and Disputes did not frame either a specific fact question or a specific legal question for this Tribunal to decide.

During the June 29, 2022 hearing, Mr. Lattiboudere (counsel for the Englewood BOE) and Mr. Kleiner (counsel for A.D.) agreed with me on the following **Statements of Fact**:

- (1) ESTEPNJ, Inc. is a 501 (c) (3) non-profit corporation incorporated in New Jersey on April 3, 2018.
- (2) ESTEPNJ, Inc. is not a “for profit” corporation and, as such, has no shares of stock and no stockholders.
- (3) As noted on the Certificate of Incorporation (ITEM #2 of Attorney Kleiner’s exhibits), ESTEPNJ, Inc.’s initial Board of Trustees consisted of Darryl David, Angela David, and Brianna David, all of whom remain as members of the Board of Trustees today.
- (4) Darryl David and Angela David are married to each other and Brianna David is their daughter.
- (5) To the best of the Attorney’s knowledge and belief, Darryl David and Angela David filed a Petition for Bankruptcy, but it appears that ESTEPNJ, Inc. did not file for bankruptcy.
- (6) ESTEPNJ, Inc. is still a viable incorporated entity, but it is currently not active nor conducting business.
- (7) On May 21, 2019 the Englewood BOE filed a lawsuit in the Bergen County Special Civil Part against ESTEPNJ, Inc. alleging breach of a contract and seeking monetary damages.
- (8) On November 8, 2019, the Bergen County Special Civil Part issued a judgment in favor to the Englewood BOE against ESTEPNJ, Inc. in the amount of \$4,722.70, which is still unsatisfied.



## APPLICABLE LAW

N.J.A.C. 6A:3-1.6(a) provides:

Where the subject matter of the controversy is a particular course of action by a district board of education ... the petitioner may include with the petition of appeal, a separate motion for emergent relief ... pending the Commissioner's final decision in the contested case."

N.J.A.C. 6A:3-1.6(b) provides:

A motion for stay or emergent relief shall be accompanied by a letter memorandum or brief which shall address the following standards to be met for granting such relief pursuant to Crowe v. DeGioia , 90 N.J. 126 (1982):

1. The petitioner will suffer irreparable harm if the requested relief is not granted;
2. The legal right underlying petitioner's claim is settled;
3. The petitioner has a likelihood of prevailing on the merits of the underlying claim; and
4. When the equities and interests of the parties are balanced, the petitioner will suffer greater harm than the respondent will suffer if the requested relief is not granted.

Crowe v. DeGioia, 90 N.J. 126 (1982) arose out of a set of circumstances regarding support and palimony matters. Nonetheless, the case has been the polestar decision in New Jersey for cases wherein injunctive relief is sought. The case stands for the proposition that an injunction cannot be granted unless and until the party seeking relief presents clear and convincing evidence that: (1) the injunction is "necessary to prevent irreparable harm"; (2) that "the legal right underlying the claim is settled"; (3) that the party seeking relief has made "a preliminary showing of a reasonable probability of ultimate success on the merits"; and (4) that "the relative hardship to the parties in granting or denying [injunctive] relief", on a balancing of the equities, weighs in his favor. Crowe, 90 N.J. at 132-34. In order to prevail, the party seeking injunctive relief must demonstrate by clear and convincing evidence that he meets all four Crowe factors. Brown v. City of Paterson, 424 N.J. Super. 176, 183 (App. Div. 2012).

“[A] party who seeks mandatory preliminary injunctive relief must satisfy a ‘particularly heavy’ burden.” Guaman v. Velez, 421 N.J. Super. 239, 247 (App. Div. 2011), Rinaldo v. RLB Inv., LLC, 387 N.J. Super. 387, 396 (App. Div. 2006).

Also, “[w]hen a case presents an issue of ‘significant public importance’, a court must [also] consider the public interest in addition to the traditional Crowe factors.” Garden State Equal. v. Dow, 216 N.J. 314, 321 (2013).

Appellate courts are bound by the trial court’s factual findings if they are supported by “substantial, credible evidence” in the record. Triffin v. Automatic Data Processing, Inc., 411 N.J. Super. 292,315 (App. Div. 2010).

Under the first Crowe factor, a party who seeks injunctive relief must establish that injunctive relief is necessary to prevent irreparable harm and to preserve the status quo. Citizens Coach Co. v. Camden Horse R.R. Co. , 29 N.J. Eq. 299, 303 (E.&A. 1878). Irreparable harm is an “injury to be suffered in the absence of injunctive relief [that] is *substantial* and *imminent*.” Waste Mgmt. of N.J., Inc. v. Union City Utils. Auth., 399 N.J. Super. 508, 520 (App. Div. 2008).

Under the second Crowe factor, injunctive relief will be withheld when the legal right underlying the claim is unsettled. Citizens Coach, at ps. 304-05.

Under the third Crowe factor, the party seeking relief is obligated to present clear and convincing evidence that he / she has a reasonable probability of ultimate success on the merits. Therefore, injunctive relief will not be granted where there are material facts in controversy. Citizens Coach at ps. 305-06. The party who seeks injunctive relief must be prepared to demonstrate facts which support his case and “must make a preliminary showing of reasonable probability of success on the merits.” Crowe, at p. 133.

The second and third Crowe factors involve fact-sensitive analysis that “requires a determination of whether the material facts are in dispute, and whether the applicable law is settled.” Waste Mgmt., at p. 528.

Under the fourth Crowe factor, the party who seeks injunctive relief must address the issue of relative hardship to the parties and he must establish that, on balance, the equities favor the grant of temporary relief to maintain the *status quo* pending the outcome of a final hearing.” Crowe at p. 134. The party seeking injunctive relief must prove his case by clear and convincing evidence. Brown at p. 183 and thus his burden is ‘particularly heavy’. Guaman at p. 247.

N.J.S.A. 18A:12-2 states:

**No member of any board of education shall be interested directly or indirectly in any contract with or claim against the board,** nor, in the case of local and regional school districts, shall he hold office as mayor or as a member of the governing body of a municipality, nor, in the case of county special services school districts and county vocational school districts, shall he hold office as a member of the governing body of a county. [Emphasis supplied.]

N.J.S.A. 18A:12-24(j) states:

Nothing shall prohibit any school official, or members of his immediate family, from representing himself, or themselves, in negotiations or proceedings concerning his, or their, own interests.

In Board of Educ. of Sea Isle City v. Kennedy, 196 N.J. 1 (2008) a Board of Education member (the President of the BOE) and his wife had an autistic child for whom they sought an IEP. Litigation ensued between the Kennedys and the school district. Kennedy voluntarily resigned from the BOE. The parties reached a settlement. The following year, Kennedy was again elected to the BOE. Claiming that the school district had violated the settlement agreement, Mrs. Kennedy filed applications requesting a due process hearing and an emergent hearing seeking various relief, including payment for services which Mrs. Kennedy provided for her son, attorney’s fees, expert’s fees, costs, and expenses. The school district sought a declaratory ruling from the Commissioner that the applications created a conflict of interest, which was incompatible with Mr. Kennedy’s continued BOE membership. The matter was referred to the Office of Administrative Law, where an ALJ issued a decision finding that Mr. Kennedy’s conduct

was permissible under the School Ethics Act (N.J.S.A. 18A: 12-21 to -34 because Kennedy's due process request was designed to protect the educational rights of his child and was permitted by N.J.S.A. 18A:12-24(j), which allows a school official to represent himself or his immediate family member concerning his / their own interests. Nonetheless, the Commissioner rejected the ALJ's recommendation, determined that Kennedy's actions created a disqualifying conflict of interest under N.J.S.A. 18A:12-2 and ordered Kennedy's removal from the BOE. The State Board of Education affirmed the removal. The Appellate Division also affirmed the removal.

The Supreme Court undertook the task of harmonizing the N.J.S.A. 18A:12-2 and N.J.S.A. 18A: 12-24j. In Kennedy, the Supreme Court held that not all controversies and disputes between parents and school districts should require a sitting board member's removal from office. The Court emphasized that what was needed was a fact-sensitive analysis in each individual case to determine whether the BOE member's interest constitutes a substantial conflict requiring his removal from office as the sole remedy. The Court noted that not all claims result in a substantial conflict. Because of this, the Court considers all factors such as whether the BOE member is pursuing a claim in the public interest or whether he is pursuing a claim for his own aggrandizement or financial gain. The Court expressed its concern that BOE members who have handicapped children should not have to fear the loss of their elected office in the event that they question or challenge the appropriateness of their own children's education. The Supreme Court concluded that a BOE member should not be removed from office merely because he has advanced any claim "in a proceeding" against a school district involving the member's or an immediate family member's interests. However, in the Kennedy case, because the due process claim included a request for monetary relief, the Supreme Court affirmed the decision of the Appellate Division, as modified therein.

### **ANALYSIS OF THE ARGUMENTS ON THE PENDING MOTION**

Counsel for Petitioner-BOE makes the following arguments pursuant to the four factors governing the granting of injunctive relief set forth in Crowe v. DiGioia, 90 N.J. 126 (1982).

### The First Crowe Factor

Regarding the first Crowe factor, the BOE's counsel notes that irreparable harm can be found when money damages is not a sufficient remedy, or when there is no adequate after-the-fact remedy available, or when the party seeking relief suffers severe personal inconvenience. The BOE's argument in support of proving irreparable harm is that if A.D. is ultimately determined by the Commissioner to be unqualified under N.J.S.A. 18A:12.2, then A.D.'s continued interim presence on the BOE, and her continued voting on matters coming before the BOE, can and will bring all her votes into question and thereby create a likelihood of litigation against the BOE by persons and entities affected by said votes. This exposure to litigation and possible liability would result in substantial and irreparable harm to the BOE. Moreover, A.D.'s continued presence on the BOE, pending the Commissioner's Final Decision, would put her in a position where she would learn sensitive and confidential information not available to the general public. Should the Commissioner's Final Decision determine that A.D. is unqualified and should therefore be removed from the BOE, the knowledge obtained in the interim could, if divulged, prejudice the interests of the BOE.

### The Second Crowe Factor

Regarding the second Crowe factor, the BOE's counsel argues that the legal rights underlying its claim for relief is well settled. Counsel points out that N.J.S.A. 18A:12-2 unequivocally prohibits a BOE member's continued membership if he or she has an interest that is adverse to the interests of the BOE. Here, the BOE has a money judgement against ETEPNJ, Inc. a non-profit corporation to which A.D. owes a fiduciary duty since she serves as one of ESTEPNJ, Inc.'s Trustees. The word "interest" in the Statute denotes more than a financial interest in a for-profit or a non-profit corporation or any other entity. It encompasses any concern with any such entity. A trustee of a non-profit corporation is duty-bound as a fiduciary to protect the interests of that entity and thus there is a readily discernable "concern" or "interest". The BOE seeks to recover the money owed to it by ESTEPNJ, Inc. and ESTEPNJ, Inc. has not yet satisfied the judgment issued by the Bergen County Special Civil Part on November 8, 2019. It is therefore clear that the interests of the two entities to which A.D. owes her loyalty are adverse (i.e., A.D.

has been placed in a position where she has conflicting loyalties). Therefore, there is no doubt that the BOE's right to seek A.D.'s removal from the BOE, pursuant to N.J.S.A. 18A:12-2, has been established.

### The Third Crowe Factor

That the money judgment issued by the Bergen County Special Civil Part on November 8, 2019 is still unsatisfied, in and of itself demonstrates that the BOE has a reasonable probability of ultimate success on the merits of its claim against ESTEPNJ, Inc., an entity to which A.D., as a trustee, owes a fiduciary duty.

### The Fourth Crowe Factor

The BOE's argument in support of the fourth Crowe factor (that the relative harm to the parties falls heavier on it than it does on A.D.) is, as noted above, that any votes cast by A.D. on BOE matters can and will expose the BOE to the probability of claims and lawsuits and potential liability, if the Commissioner ultimately determines in his Final Decision that A.D. is (and has been) unqualified to serve as a BOE member pursuant to N.J.S.A. 18A: 12.2. This would expose the BOE to a greater harm than any conceivable harm to A.D. in the circumstances presented. The BOE's argument comes down to the following: the balance between A.D.'s interest in continuing to serve on the BOE and the BOE's potential exposure to multiple lawsuits weighs heavily in favor of the relief seeker, the BOE.

## **LEGAL ANALYSIS OF THE ARGUMENTS CONCERNING THE CROWE FACTORS AND CONCLUSIONS**

### Analysis of the First Crowe Factor: The Claim of Irreparable Harm

A party seeking injunctive relief must demonstrate the need for relief by clear and convincing evidence. Brown, *supra*. The party seeking injunctive relief must demonstrate that the claim of irreparable harm is substantial and imminent. Waste Mgmt., *supra*. I

**CONCLUDE** that the BOE has adequately demonstrated that it can and will likely suffer irreparable harm and therefore the BOE has satisfied the first Crowe factor.

Analysis of the Second Crowe Factor: Whether The Law is Settled or Not

The Board cites and relies on the provisions of N.J.S.A. 18A:12-2. I **CONCLUDE** that the law is settled, and that N.J.S.A. 18A:12-2 sets forth that a member of a BOE cannot continue to serve if she has interests that are in conflict with her duties to the BOE. I **CONCLUDE** that the BOE has demonstrated that A.D. is in a position where she serves two competing masters and therefore she cannot continue to serve on the BOE pursuant to N.J.S.A. 18A:12-2. I **CONCLUDE** that the BOE has satisfied the second Crowe factor.

Analysis of the Third Crowe Factor: That D'Amico has Shown a Reasonable Likelihood of Success on the Merits

I **CONCLUDE** that the BOE has demonstrated that it has a reasonable probability of success on the merits. Therefore, I **CONCLUDE** that the BOE has satisfied the third Crowe factor.

Analysis of the Fourth Crowe Factor : Relative Harm to the Parties

The BOE has demonstrated that its exposure to lawsuits is realistic and it can suffer harm that would be greater than any conceivable harm that might be visited upon A.D. Therefore, I **CONCLUDE** that the BOE has satisfied the fourth Crowe factor.

Application of the Kennedy Decision

Both parties cited the case of Board of Educ. of Sea Isle City v. Kennedy, 196 N.J. 1 (2008). The following is my analysis of the parties' arguments pursuant to the Kennedy decision.

The upshot of Kennedy case is that the Supreme Court held that removal should not be automatic, but rather should be appraised on a close factual analysis on a case-by-case. The Court would consider whether there is a substantial, disqualifying conflict of interest identified by the type of claim (one motivated by the desire to advance the benefit of the public at large versus one motivated, even in part, for personal aggrandizement or for financial reasons) or by the type of proceeding, i.e., whether it was brought under N.J.S.A. 18A:12-2 or under the School Ethics Act, N.J.S.A. 18A:12-21 to -34. The Court made it clear in Kennedy, that when the Board member has a financial interest in the claim, then he has a conflict of interest. Therefore, the court ruled that Kennedy could not continue to remain on the BOE and he can be removed. Furthermore, the language of N.J.S.A. 18A-12.2 is not limited to financial interests. It follows that any interest in an entity that is adverse to the interests of the BOE will suffice to trigger the disqualification of a BOE member from serving on the BOE.

In the matter at bar, the BOE has a money judgment against ESTEPNJ, Inc., which remains unsatisfied. A.D.'s service as a member of the Board of Trustees of ESTEPNJ, Inc. places her in a position where she has competing loyalties to ESTEPNJ, Inc. on the one hand and the BOE on the other. This division of loyalty is proscribed by N.J.S.A. 18A: 12-2 and the statute is clear that in such circumstances, the BOE member cannot continue to serve as a BOE member.

Therefore, in line with the plain language of N.J.S.A. 18A:12-2, I **CONCLUDE** that there is good reason for A.D.'s suspension from the Board pending the Commissioner's Final Decision.

I **CONCLUDE** that the facts and arguments presented by A.D.'s counsel to this Tribunal do not demonstrate that the issue before this Tribunal has previously been decided and is therefore barred by the doctrines of *res judicata* and/or *collateral estoppel*. The issue before this Tribunal involves whether A.D., who is a board member of the Englewood BOE and who is also a member of the Board of Trustees of ESTEPNJ, Inc. can continue to serve on the Englewood BOE in light of the prohibitions set forth in N.J.S.A. 18A: 12-2. The above-stated issue presently before this Tribunal does not pertain to whether or not Darryl Davis is an Englewood fireman, whether or not the



summer camp was closed due to allegations of improper fingerprinting or improper filings of paperwork, whether or not A.D. is an “owner” of ESTEPNJ, Inc., whether or not A.D. was a volunteer working for ESTEPNJ, Inc., whether A.D. was ever paid for her services rendered to ESTEPNJ, Inc., whether or not A.D. ever attempted to pay ESTEPNJ, Inc.’s debts with her own personal check, whether or not Angela David and Darryl David filed for bankruptcy, or whether or not A.D. has “political” enemies. I **CONCLUDE**, from the information before me, that the issue before this Tribunal has not been previously decided. I **CONCLUDE** that there are no further issues left to be decided by this Tribunal.

### **ORDER**

It is hereby **ORDERED** that the BOE’s motion for emergent relief in the form of an Order suspending Angela David from the Englewood BOE pending the ultimate determination of the Commissioner of Education should be, and hereby is **GRANTED**. It is further **ORDERED** that Angela David’s motion for the award of her costs and attorney’s fees should be, and hereby is **DENIED**.

I hereby **FILE** this initial decision with the **COMMISSIONER OF THE DEPARTMENT OF EDUCATION** for consideration.

This recommended decision may be adopted, modified or rejected by the **COMMISSIONER OF THE DEPARTMENT OF EDUCATION**, who by law is authorized to make a final decision in this matter. If the Commissioner of the Department of Education does not adopt, modify or reject this decision within forty-five days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

Within thirteen days from the date on which this recommended decision was mailed to the parties, any party may file written exceptions with the **COMMISSIONER OF THE DEPARTMENT OF EDUCATION, ATTN: BUREAU OF CONTROVERSIES AND DISPUTES, 100 Riverview Plaza, 4th Floor, PO Box 500, Trenton, New Jersey 08625-0500**, marked "Attention: Exceptions." A copy of any exceptions must be sent to the judge and to the other parties.

June 30, 2022



\_\_\_\_\_  
DATE

\_\_\_\_\_  
**JOHN P. SCOLLO, ALJ**

Date Received at Agency:

\_\_\_\_\_

Date Mailed to Parties:

\_\_\_\_\_

db