

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

Board of Education of the Borough of Milltown,  
Middlesex County,

Petitioner,

v.

Egnita Pardo,

Respondent.

**Synopsis**

The petitioning Board filed this matter seeking to preclude respondent from being sworn in as a member of the board due to her interest in a claim against the school district. The Commissioner granted emergent relief to the Board in an Order that precluded respondent from being sworn in as a Board member pending a final decision on the merits of the case. Respondent, who was elected to the Board in November 2021 and was due to be sworn in on January 4, 2022, had filed a notice of tort claim with her husband against the Board on behalf of her minor son in 2017. Respondent withdrew her notice of tort claim in December 2021, and later executed a release of her minor son's claims, which was approved by the Superior Court in a friendly hearing on January 28, 2022. The Board filed a motion for summary decision; respondent filed a cross-motion seeking indemnification for her costs and attorney fees in defending this matter.

The ALJ found, *inter alia*, that: the issue of indemnification of members of boards of education against the cost of legal proceedings is governed by *N.J.S.A. 18A:12-20*, which provides for indemnification when a legal action against a sitting board member arises out of and in the course of the performance of their duties as a member of the board; the issue here is whether *N.J.S.A. 18A:12-20* requires that petitioner be indemnified for legal fees and expenses incurred in connection with her defense in this matter; respondent cured the initial conflict of interest by executing the release of claims, but also has a direct interest in a claim for reimbursement for costs and attorney's fees; respondent is not entitled to indemnification as the Board's actions in seeking to preclude her from being sworn in were justified based on her conflict of interest in violation of *N.J.A.C. 1:1-18.4*; and respondent's expenditures in this matter are related to resolving her own conflict of interest prior to being seated on the Board. The ALJ concluded that respondent has not shown entitlement to indemnification as her actions and expenditures were related to resolving her conflict. Accordingly, respondent's claim for indemnification was dismissed and respondent was cleared to be sworn in as a member of the Board.

Upon review, the Commissioner, *inter alia*, concurred with the ALJ that the respondent no longer has a conflict and may be seated as a member of the Board. Accordingly, the Initial Decision of the OAL was adopted as the final decision in this matter; respondent's claim for indemnification was dismissed and she is eligible to be sworn in as a Board member.

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.

113-22

OAL Dkt. No. EDU 10256-21

Agency Dkt. No. 237-12/21

## New Jersey Commissioner of Education

### Final Decision

Board of Education of the Borough of  
Milltown, Middlesex County,

Petitioner,

v.

Egnita Pardo,

Respondent.

The record of this matter and the Initial Decision<sup>1</sup> of the Office of Administrative Law (OAL) have been reviewed, as have the exceptions filed pursuant to *N.J.A.C. 1:1-18.4* by respondent Egnita Pardo and petitioner Milltown Board of Education (Board or Milltown), as well as the Board's reply to the respondent's exceptions.

Milltown filed this matter seeking to preclude respondent from being sworn in as a Board member due to her interest in a claim against the school district. Respondent, who was elected to the Board in November 2021 and was due to be sworn in on January 4, 2022, had filed a notice of tort claim with her husband against the Board on behalf of her minor son in 2017. Respondent withdrew her notice of tort claim in December 2021; however, due to the nature of the claims, a notice of tort claim is no longer required in order for her son to file suit, and respondent had not released the claims.

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<sup>1</sup> This matter was captioned as a "Revised Initial Decision" in order to correct an error in which this matter was inadvertently captioned as an "Order."

In deciding the Board's motion for emergent relief on December 29, 2021, the Administrative Law Judge (ALJ) found that respondent had a direct or indirect interest in an inchoate claim made by her minor child against the Board, which would preclude her from serving on the Board in accordance with *N.J.S.A. 18A:12-2*. The Commissioner granted emergent relief to the Board in an Order that precluded respondent from being sworn in as a Board member, and additionally precluded the Board from filling respondent's seat while this matter is pending. Respondent also filed a cross petition for indemnification, which the Commissioner determined would be decided as part of this matter. On January 3, 2022, respondent executed a release of her minor's claims, which was approved by the Superior Court in a friendly hearing on January 28, 2022.

In the Initial Decision, the ALJ found that respondent cured the conflict of interest by executing the release of claims, but also had a direct interest in a claim for reimbursement for costs and attorney's fees. The ALJ concluded that respondent was not entitled to indemnification because the Board's actions in seeking to preclude her from being sworn in were justified based on her conflict of interest in violation of *N.J.A.C. 1:1-18.4*, and respondent's expenditures in this matter and the Superior Court action were related to resolving her own conflict of interest. As such, the ALJ found that she could be sworn in as a member of the Board but dismissed her claim for indemnification.

In her exceptions, respondent contends that *N.J.S.A. 18A:12-20* supports her claim for indemnification because she is an elected Board member who was forced to expend her own funds in the defense of this administrative action that arises out of her duties as a member of the Board. Respondent disagrees with the ALJ's findings that: she was not entitled to

indemnification because she was required to institute the Superior Court matter to cure her conflict; her expenditures in the administrative matter needed to be addressed before becoming a Board member; and board members-elect are not entitled to indemnification. Respondent points out that her claim for indemnification only involves this matter, and not the matter in Superior Court. Respondent further contends that whether the Board's actions were "proper" or whether her expenditures needed to be addressed are misguided arguments because the Board failed to inform her of her conflict until a month after her election and ignored good faith efforts to cure it, forcing her to defend against the administrative action.

Respondent also argues that the ALJ failed to consider or analyze the extensive case law presented that demonstrates that board members-elect who need to cure a conflict of interest prior to assuming office are entitled to indemnification of costs and fees. *See Jones v. Kolbeck*, 119 N.J. Super. 299 (App. Div. 1972); *Surada v. Jersey City Board of Education*, 167 N.J. Super 331 (Law Div. 1979); *Edgar Brown and Oliver Brown v. Board of Education of the City of Newark, Essex County*, Agency Dkt. No. 119-4/84, dated September 19, 1988. Additionally, respondent contends that the cases relied upon by the ALJ are inapplicable to this matter. Finally, respondent maintains that her claim for indemnification does not create an inconsistent interest that would disqualify her from Board membership pursuant to N.J.S.A. 18A:12-2. Accordingly, respondent asks the Commissioner to reject the Initial Decision as it pertains to her claim for indemnification, and award her with the attorneys' fees and costs associated with her defense of this matter.

In reply, the Board argues that the ALJ appropriately found that respondent is not entitled to indemnification. The Board maintains that N.J.S.A. 18A:12-20 unambiguously

applies to members of boards of education, such that the statute is limited to members who have been sworn in. The Board argues that respondent was not a sworn member of the Board; she was ineligible to take the oath of office; and her expenses were personal, not arising from board member duties. The Board also contends that members of a board are treated differently than board members-elect with respect to determining conflicts of interest because members-elect must meet the requirement that they have no inconsistent claims as a condition for assuming office as a board member, whereas certain conflicts may not require removal of a sitting member of a board. Respondent maintains that the cases respondent relies upon are inapplicable because they either involve board members who have already been sworn in or are otherwise distinguishable. Further, the Board argues that *Francesco Cordasco v. Board of Education of the Town of West New York, Hudson County*, 96 N.J.A.R.2d (EDU) 661, dated May 8, 1996, demonstrates that board members who are not sworn in are not entitled to indemnification. As such, the Board asks the Commissioner to adopt the Initial Decision. Additionally, the Board seeks guidance from the Commissioner regarding respondent's continued litigation of her claims for indemnification, including a potential appeal of this matter, which would be an inconsistent claim that is subject to disqualification or removal.<sup>2</sup>

Upon review, the Commissioner agrees with the ALJ that respondent no longer has a conflict and may be seated as a member of the Board. Pursuant to *N.J.S.A. 18A:12-2*, "No member of any board of education shall be interested directly or indirectly in any contract with or claim against the board . . . ." According to *N.J.S.A. 18A:12-2.1*, "Each member of a board of

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<sup>2</sup> The Board filed exceptions because the ALJ did not consider its Opposition to the Cross-Motion for Summary Decision/Reply Brief, dated February 27, 2021. The Commissioner notes that the letter brief and exhibits are in the record.

education shall, before entering upon the duties of his office, take and subscribe: (1) An oath that he possesses the qualifications of membership prescribed by law . . . .” In this matter, respondent has executed a release of her claim against the Board and, accordingly, no longer has the conflict that disqualified her from taking the oath of office. As such, respondent may be sworn in as a member of the Board.<sup>3</sup>

With respect to respondent’s claim for indemnification, the Commissioner finds that respondent is not entitled to recovery of the costs and fees incurred in this matter. *N.J.S.A.* 18A:12-20 provides:

Whenever a civil, administrative, criminal or quasi-criminal action or other legal proceeding has been or shall be brought against any person for any act or omission arising out of and in the course of the performance of his duties as a member of a board of education, and in the case of a criminal or quasi-criminal action such action results in final disposition in favor of such person, the board of education shall defray all costs of defending such action, including reasonable counsel fees and expenses, together with costs of appeal, if any, and shall save harmless and protect such person from any financial loss resulting therefrom. . . .

It is established that legal fees in connection with the defense of a challenge to board membership fall within the purview of *N.J.S.A.* 18A:12-20. *Surada, supra*, 167 *N.J. Super* at 333-34 (citing *Jones, supra*, 119 *N.J. Super*. 299). In this matter, the question is whether the statute applies to those who are not yet sworn in as board members.

When evaluating a statute, the intent of the legislature can be gleaned from the plain meaning of the language. *Board of Education of the City of Sea Isle City v. Kennedy*, 196 *N.J.* 1, 12 (2008). The language of the statute indicates that indemnification is permitted when legal proceedings are initiated “against any person for any act or omission arising out of and in the

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<sup>3</sup> It appears that respondent has already been sworn in as a member of the Board.

course of the performance of his duties as a member of a board of education.” *N.J.S.A. 18A:12-20*. It is unambiguous that the protections against incurring costs and fees would only apply to board members when the matter arises out of in and the course of the performance of their role on the board, and not those who are not yet members of the board.

The Commissioner will nevertheless review the relevant case law cited by respondent. First, in *Jones v. Kolbeck*, 119 *N.J. Super.* 299 (App. Div. 1972), appellants sought the removal of board members because they were teachers in another school district. The Appellate Division found that respondents were not precluded from serving as board members and ordered their counsel fees to be paid because they were sued based on their board membership. Similarly, in *Surada v. Jersey City Board of Education*, 167 *N.J. Super.* 331 (Law Div. 1979), three people were appointed to the Board by a lame duck mayor, and after taking office, the new mayor challenged their appointments. One of the members was successful in defending the challenge, while the other two were not. Regardless, the court found that they were rendering the services required of their office and were entitled to indemnification for the defense of the challenge to their membership.

Additionally, in *Board of Education of the Township of Barnegat, Ocean County v. Robert A. Houser*, Commissioner’s Decision No. 306-07, dated July 30, 2007, Houser’s wife had a pending Worker’s Compensation case at the time of his election to the board, which would have precluded him from being qualified for office, but neither the board nor Houser addressed the inconsistent interest. He nevertheless took the oath of office, entered into the duties of membership, and served on the board for a year. The Commissioner found that both the Board and Houser were equally culpable in failing to identify the conflict, which was promptly cured.

Accordingly, in the interests of justice, the Commissioner deemed the Board's petition and the curing of the conflict *nunc pro tunc* – i.e., as if they had occurred prior to Houser's seating on the board – and found that Houser was entitled to indemnification of the costs of defending the board's action.

Finally, in *Edgar Brown and Oliver Brown v. Board of Education of the City of Newark, Essex County*, Agency Dkt. No. 119-4/84, dated September 19, 1988, the petitioners were elected to the Board and qualified for membership, but the Board acted illegally and denied their right to be sworn in. The Commissioner found that “[b]ut for the illegal action of the Board, there is no question that petitioners would be protected by *N.J.S.A. 18A:12-20* for indemnification of legal fees and costs.” The Commissioner further found that “it is not unreasonable to conclude that duly elected, qualified board members, prevented from assuming the duties of such membership by an illegal board action, are entitled, within the intendment of *N.J.S.A. 18A:12-20*, to the same protection of indemnification for defending a challenge to board membership as individuals who were sworn in and served as *de facto* board members but were subsequently disqualified.”

The Commissioner finds that *Jones*, *Surada* and *Houser* all demonstrate that sitting board members are entitled to indemnification after their membership has been challenged – even when the conflict may have occurred prior to entering office – but fail to address whether the statute applies to those who are not yet sworn in as board members. While the board member in *Houser* should have been precluded from taking the oath of office due to his inconsistent interest, he nevertheless did take office and performed the duties as a board member, entitling him to indemnification.



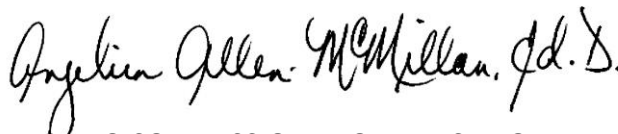
The one case that granted indemnification to board members who had not taken the oath of office is distinguishable from the current matter and falls short of setting a precedent for all board members-elect because it is limited in circumstance. *Brown* allows those who are “duly elected, qualified board members, prevented from assuming the duties of such membership by an illegal board action” to be indemnified. In this matter, respondent was not qualified as a Board member until after her conflict was cured, which did not occur until after the date that she was originally scheduled to take the oath of office. Additionally, the Board in this matter did not take illegal action to block respondent from being sworn in. Instead, the Board sought approval through legal avenues to address respondent’s conflict. As such, while the board members-elect in *Brown*, were entitled to indemnification, no such factual circumstance exists here to bring respondent under the intendment of the statute.

The Board cites to *Francesco Cordasco v. Board of Education of the Town of West New York, Hudson County*, 96 N.J.A.R.2d (EDU) 661, dated May 8, 1996, for the proposition that board members who have not entered office are not entitled to indemnification, but the Commissioner notes that the case is not persuasive. In that matter, a challenge arose against Cordasco’s appointment to the Board by a lame duck mayor prior to his swearing in as a board member. The Commissioner found that Cordasco was not entitled to indemnification because he brought the legal action, rather than defending against one brought against him, which does not fall under *N.J.S.A. 18A:12-20*. The Commissioner noted that “[i]n view of this finding, it is not necessary to address the claim that petitioner never served as a board member.” *Id.* at 665. As such, this matter does not provide guidance as to whether people who have never served as board members are entitled to indemnification.

The Commissioner finds that respondent is not entitled to indemnification because she was not a sworn board member who was serving in the position, nor was she qualified to become a Board member. According to *N.J.S.A. 18A:12-2.1*, “Each member of a board of education shall, before entering upon the duties of his office, take and subscribe: (1) An oath that he possesses the qualifications of membership prescribed by law . . . .” As respondent had an inconsistent interest disqualifying her from membership pursuant to *N.J.S.A. 18A:12-2*, she was unable to take the oath of office because she was unable to attest that she had the qualifications required for the office. As such, considering both the plain meaning of the statute, as well as the relevant case law, respondent is not entitled to indemnification as her defense of this administrative matter did not arise from her duties as a board member.<sup>4</sup>

Accordingly, the Initial Decision of the OAL is adopted as the final decision in this matter. Respondent is eligible to be sworn in as a Board member, but her claim for indemnification is hereby dismissed.

IT IS SO ORDERED.<sup>5</sup>



ACTING COMMISSIONER OF EDUCATION

Date of Decision: May 25, 2022  
Date of Mailing: May 25, 2022

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<sup>4</sup> The Commissioner notes that this claim for indemnification cannot be a disqualifying interest as board members have a statutory right to seek indemnification. *N.J.S.A. 18A:12-2*.

<sup>5</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

**REVISED INITIAL DECISION**  
**GRANTING SUMMARY DECISION**  
**MOTION, AND DENYING**  
**CROSS MOTION**

OAL DKT. NO. EDU 10256-21S  
AGENCY DKT. NO. 237-12/21

**MILLTOWN BOARD OF EDUCATION,  
MIDDLESEX COUNTY,**

Petitioner,

**EGNITA PARDO,**

Respondent.

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**Aron Mandel, Esq.**, for petitioner (Busch Law Group, attorneys)

**Nicholas J. Repici, Esq.**, and **Michael J. Reilly Esq.**, (Lenox, Socey, Formidoni, Giordano, Lang & Casey, attorneys,) for respondent, Egnita Pardo

Record Closed: February 23, 2022

Decided: February 28, 2022

BEFORE **JOSEPH A. ASCIONE**, ALJ:

**STATEMENT OF THE CASE AND PROCEDURAL HISTORY**

On February 3, 2022, petitioner, Borough of Milltown, Board of Education, Middlesex County, (Board) moved for summary disposition seeking to dismiss respondent, Egnita Pardo's, counterclaim for attorney fees. The matter initially transmitted to the Office of

Administrative Law (OAL) on December 17, 2021, for a ruling on the emergent application. Respondent was not seated because of an inchoate claim against the Board of Education. On February 23, 2022, respondent filed opposition and cross-moved for indemnification for costs, and attorney fees. The Cross Petition seeks legal fees and cost to defend the application, the latter Cross Petition was deferred to the Department of Education to resubmit, as appropriate, that application was resubmitted, and a determination of the right to reimbursement and whether the claim for reimbursement again creates a conflict depriving respondent from her seat. Oral argument was not provided the parties. The record with respect to the two motions for summary disposition closed on February 23, 2022.

### **FACTUAL DISCUSSION**

The essential facts in this matter are not in dispute. The inchoate claim of respondent's issue has been resolved by an Order of the Superior Court, see Exhibit P and Q of petitioner's brief. The remaining claim is for the reimbursement in connection with the defense of respondent's been disputed.

Petitioner is a board of education which is duly organized under the Statutes of the State of New Jersey and is subject to the specific statutes covered in Title 18A of the New Jersey Statutes.

Pardo was elected to the Milltown Board of Education at the November 2021 School Election and is due to be sworn in at the upcoming Organization Meeting on January 4, 2022.

### **LEGAL DISCUSSION AND ANALYSIS**

Just as an underaged candidate for political office is deprived of the ability to be sworn in. Here a candidate for the Board of Education is imputed with knowledge that a conflict of interest will deprive one of the abilities to be seated.

Conflicts of interest apply to membership, not candidacy, and that if a conflict may be cured prior to taking a seat, the successful candidate may be sworn in as a board member.

N.J.S.A. 18A:12-2, states as follows:

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 hold the 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.

Here, Pardo did not cure the conflict timely to be sworn in. It is now cured. Individual circumstances in each case are required to be examined to determine whether the claim is substantial and material so as to require disqualification. In the Matter of the Election of Dorothy Bayless to the Board of Education of Lawrence Township School District, 1974 S.L.D. 595, reversed, State Board 603.

Lack of conflicting interest is a qualification for board membership. See, Visotcky v. City Council of Garfield, 113 N.J. Super. 263 (App. Div. 1971). The interest which disqualifies is not necessarily a direct pecuniary interest, nor is the amount of such an interest of paramount importance; it is based on the moral rule that no man can serve two masters whose interest's conflict. Aldom v. Borough of Roseland, 42 N.J. Super. 495, 502 (App. Div. 1956). In Taliafero vs. Hawthorne Board of Education, 94 N.J.A.R. 2d (EDU) 197 wherein a board member's indirect interest in his wife's lawsuit against a board of education disqualified him from board membership.

In this matter, Pardo, has a direct claim in reimbursement for her costs and attorney fees. The Superior Court would not consider it and deferred it back to the Board of Education.

In Errington v. Mansfield Twp. Bd. of Educ., 100 N.J. Super. 130, 138 (App. Div. 1968). In a suit by a former mayor, the Appellate Division affirmed the dismissal of the claim for indemnification of attorney's fees, where "[t]he costs he incurred were for the defense of suits that challenged his entitlement to hold office and the regularity of his election." Matthews v. Atl. City, 196 N.J. Super. 338, 339- 40 (App. Div. 1984). The Matthews Court explained that indemnification was not permitted, because the plaintiff sought indemnification for "expenses [that] were not for costs incurred in the defense of legal attacks on his actions taken in the discharge of duties imposed or authorized by law." Id.

This matter is akin to the finding in Cordasco v. West New York Bd. of Educ., OAL Dkt. No. EDU 5892-95; Agency Dkt. No. 145-5/95, 96 N.J.A.R.2d (EDU) 661 (Final Agency Decision May 8, 1996), this tribunal finds little support in the cases provided by respondent. The actions by Pardo in Superior Court she instituted to resolve her conflict. The actions of the Board were proper in denying Pardo the position as she had a conflict. Pardo's expenditures in both applications needed to be addressed before she could become a Board Member. The right to indemnification is designed to provide protection from actions taken while a Board Member. These expenditures do not fall in that category,

### **CONCLUSION**

The Board has shown Pardo is not entitled to reimbursement of her costs and attorney fees.

The Board was justified in seeking direction not to seat Pardo to her position as a member of the Milltown Board of Education.

Pardo has not shown entitlement to indemnification as her actions and expenditures were related to resolving her conflict.

As this Order rejects Pardo's claim for reimbursement, she no longer has a conflict and may be seated as a Board Member.

This tribunal views the claim for indemnification as a ministerial claim by a Board Member. Ethically, she can take no part in consideration of that reimbursement. If the Commissioner of Education or the Appellate Division seeks to revise this Initial Decision, then the existing conflict of interest created by that reversal can be dealt with at that time.

Therefore, I **CONCLUDE** summary disposition be granted in favor of the Board, dismissing respondent's counterclaim for indemnification of attorney fees and cost.

I **CONCLUDE** that respondent should be sworn as a member of the board of education, as she no longer has a conflict of interest.

**ORDER**

Based upon the foregoing discussion, it is hereby **ORDERED** that respondent's cross-petition for indemnification is **DISMISSED**; and

It is **ORDERED** petitioner's motion for Summary Disposition is **GRANTED** in so far as it disposes of the Cross-Petition.

It is **ORDERED** Pardo be sworn in as a member of the Milltown Board of Education.

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.

A handwritten signature in cursive script, appearing to read "Joseph G. Cascone".

February 28, 2022  
DATE

**JOSEPH A. ASCIONE, ALJ**

Date Received at Agency:

February 28, 2022

Date Mailed to Parties:

February 28, 2022



**APPENDIX**

**LIST OF WITNESSES:**

**For Petitioner:**

None

**For Respondent:**

None

**LIST OF EXHIBITS:**

Emergent Relief

**For Petitioner:**

P-1 Request for Summary Disposition with attachments

**For Respondent:**

R-1 Respondent's motion for Summary Disposition with attachments