

## New Jersey Commissioner of Education

### Final Decision

Salvatore Piarulli,

Petitioner,

v.

Board of Education of the Borough of Garwood,  
Union County, Board of Education of the  
Township of Clark, Tracey Roland, *et al*,

Respondents.

### Synopsis

Petitioner – a member of the Garwood Board of Education (Garwood or Garwood BOE) – challenged the respondent Board’s action replacing him as the Garwood BOE’s sending district representative (SDR) to the Clark Board of Education (Clark or Clark BOE), claiming, *inter alia*, that his removal as SDR was *ultra vires* and void. Petitioner had been appointed in January 2022 to serve as Garwood’s SDR on the Clark BOE, pursuant to *N.J.S.A. 18A:38-8.2*. Garwood voted on October 18, 2022 to remove petitioner as its SDR. Petitioner subsequently served the Garwood BOE with a Notice of Claim seeking \$10 million dollars in damages based on an allegation that he was slandered and libeled as the result of his removal as SDR. The instant petition was filed on January 24, 2023. The Garwood BOE filed a motion to dismiss, contending that the petition is time-barred pursuant to *N.J.A.C. 6A:3-1.3*, and that the Board has the authority under *N.J.S.A. 18A:11-1(d)* to appoint or remove any board member to / from the SDR position.

The ALJ found, *inter alia*, that: Garwood had the legal authority to remove petitioner as SDR and did not act *ultra vires* when it voted to do so; when petitioner filed his Notice of Claim, he was not protecting any of the public’s rights but rather was asserting a monetary claim for his own benefit; and the petition was filed beyond the allowable time limit. Accordingly, the ALJ granted the Board’s motion to dismiss the case as untimely under *N.J.A.C. 6A:3-1.3(i)*.

Upon review, the Commissioner concurred with the ALJ that the petition of appeal was untimely under *N.J.A.C. 6A:3-1.3(i)* and adopted the Initial Decision of the OAL with modification to acknowledge that petitioner’s claims regarding Garwood’s filing of a Superior Court lawsuit were timely, as they were included in the petition of appeal and filed four days after the lawsuit was filed. However, all issues regarding petitioner’s alleged conflict of interest and removal from the Garwood BOE were resolved prior to the Commissioner’s consideration of the case herein and are therefore moot. Accordingly, the petition was dismissed.

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.

309-23  
OAL Dkt. No. 01274-23  
Agency Dkt. No. 11-1/23

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

Salvatore Piarulli,

Petitioner,

v.

Board of Education of the Borough of  
Garwood, Union County, Board of Education  
of the Township of Clark, Union County,  
Tracey Roland, Timothy Ryan, Al DelConte,  
Christine Gurriero, Vincent Basciano,  
Adrienne Barnes, Jennifer Uva, April Farrell,  
Tina Simitz, Linda Koenig, and  
Maureen Crawford,

Respondents.

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

Petitioner is a member of the Garwood BOE. Garwood sends its students to Clark Township for high school. Pursuant to, Garwood is entitled to one representative on the Clark Board of Education (Clark or Clark BOE). Petitioner was appointed as Garwood's sending district representative (SDR) on the Clark BOE in January 2022. On October 18, 2022, Garwood voted to remove petitioner as its SDR.

On January 10, 2023, petitioner served Garwood with a Notice of Claim seeking \$10 million dollars in damages based on an allegation that “[o]n October 18, 2022, Mr. Piarulli was slandered and libeled”. On January 20, 2023, Garwood filed a complaint in Superior Court seeking to remove petitioner from the Garwood BOE because the Notice of Claim created a conflict of interest in violation of *N.J.S.A. 18A:12-2*. The Superior Court complaint was dismissed to allow review by the Commissioner; Garwood then filed a petition of appeal seeking petitioner’s removal from the Garwood BOE. That petition was transmitted to the OAL as *Bd. of Educ. of the Borough of Garwood, Union Co. v. Salvatore Piarulli*, Agency Dkt. No. 27-2/23, EDU 01176-23. On February 13, 2023, petitioner agreed to withdraw his Notice of Claim, and Garwood agreed to withdraw its petition.

In the meantime, petitioner filed the instant petition of appeal on January 24, 2023. The petition sought relief relating to two issues. First, petitioner sought a determination that Garwood’s removal of petitioner as SDR was *ultra vires* and void, and that, consequently, any actions of the Clark BOE after October 18, 2022 were also null and void. Second, petitioner sought a declaration that his Notice of Claim was primarily filed in the public interest, that Garwood’s filing of the Superior Court lawsuit was *ultra vires*, and that petitioner may continue to serve on the Garwood BOE provided that he recuses himself from any discussion regarding his claim that occurs.

Following a motion to dismiss, the Administrative Law Judge (ALJ) concluded that Garwood had the authority to remove petitioner as SDR and did not act *ultra vires* when it voted to do so. The ALJ found that when petitioner filed his Notice of Claim, he was not protecting any of the public’s rights but was asserting a monetary claim for his own benefit.

Finally, the ALJ concluded that the petition was filed beyond the 90-day time limit allowed by *N.J.A.C. 6A:3-1.3(i)* and must be dismissed.

In his exceptions, petitioner argues that he was removed as SDR based on defamatory allegations that he had violated the School Ethics Act, and that there is a factual dispute regarding the issue of defamation which precludes summary decision. According to petitioner, Garwood did not have the legal authority to remove him as SDR without filing a petition of appeal, because only the Commissioner has jurisdiction over matters concerning the school laws. Petitioner contends that the portion of his petition related to Garwood's filing of the Superior Court complaint was not untimely, because the petition was filed within 90 days of the date the Board filed the Superior Court complaint. Petitioner also argues that his petition was not untimely as to the rest of his claims, because Garwood engaged in a continuing tort and was on notice of his claims prior to the expiration of the 90-day limitations period, based on his January 10, 2023 Notice of Claim. Finally, petitioner argues that even if the 90-day limitations period did expire, it should be tolled on equitable grounds.

In reply, Garwood argues that the ALJ correctly concluded that Garwood had the authority to remove petitioner as SDR and that the petition of appeal was untimely. Accordingly, Garwood urges the Commissioner to adopt the Initial Decision.

Upon review, the Commissioner concurs with the ALJ that petitioner's claims regarding his removal as SDR are untimely. Pursuant to *N.J.A.C. 6A:3-1.3(d)*, the 90-day period for the filing of an appeal to the Commissioner begins when the affected individuals have received adequate notice. For the notice to be adequate, the individuals must have been alerted to the existence of facts which gave rise to a cause of action. *Kaprow v. Bd. of Educ. of Berkeley Twp.*,

131 N.J. 572, 586-587 (1993). Petitioner was clearly on notice as of October 18, 2022, that he had been removed as SDR. Accordingly, any petition related to that action should have been filed on or before January 16, 2023, but the petition of appeal in this matter was not filed until January 24, 2023.

The Commissioner rejects petitioner's argument that Garwood was on notice that petitioner intended to challenge his removal as SDR based on the January 10, 2023 Notice of Claim. The Commissioner has previously held that the timeliness of a complaint in another forum, in and of itself, has no bearing upon the timeliness of a petition under the Department of Education's regulations. *A.S., o/b/o minor child, P.P. v. Bd. of Educ. of the Pinelands Regional Sch. Dist., Ocean Cty.*, Commissioner Decision No. 411-09 (December 16, 2009). The purpose of the time limitation is, in part, to serve as a measure of repose through which a board of education can be secure, after the 90 days have elapsed, that its decisions will not be challenged before the Commissioner. *See, e.g., Kaprow, supra*. This requirement cannot be circumvented by serving a Notice of Claim, which is governed by rules that are completely distinct from those governing controversies and disputes arising under the school laws over which the Commissioner has jurisdiction.

The Commissioner also rejects petitioner's argument that Garwood engaged in a pattern of tortious conduct and therefore the 90-day limitations period runs from the latest action. Initially, the action that petitioner claims continued the pattern was Garwood's filing of the Superior Court complaint. That filing occurred on January 20, 2023, after the time limit for petitioner to challenge the October 18, 2022 vote that removed him as SDR had expired. Moreover, the Commissioner finds that Garwood's action in seeking petitioner's removal from

the Board is separate and apart from its actions in removing him as SDR. Each action triggers the start of its own 90-day limitations period, and any claims regarding the Superior Court complaint cannot be used to excuse the late filing of petitioner's claims regarding his removal as SDR. Finally, the Commissioner concludes that there are no circumstances present that warrant the relaxation of the 90-day rule. Accordingly, the Commissioner concludes that petitioner's claims regarding his removal as SDR are untimely and must be dismissed.<sup>1</sup>

However, the Commissioner finds that petitioner's claims regarding Garwood's filing of the Superior Court lawsuit are timely, as they were included in the petition of appeal which was filed only four days after the lawsuit was filed. Nonetheless, the Commissioner concludes that these claims must be dismissed as moot. "Mootness is a threshold justiciability determination rooted in the notion that judicial power is to be exercised only when a party is immediately threatened with harm. A case is technically moot when the original issue presented has been resolved, at least concerning the parties who initiated the litigation. To restate, an issue is moot when the decision sought in a matter, when rendered, can have no practical effect on the existing controversy." *Betancourt v. Trinitas Hosp.*, 415 N.J. Super. 301, 311 (App. Div. 2010) (internal quotations and citations omitted).

The record reflects that the Superior Court complaint seeking petitioner's removal from the Garwood BOE has been dismissed, petitioner has withdrawn his Notice of Claim against Garwood, and Garwood has withdrawn the petition of appeal seeking petitioner's removal from the Garwood BOE. Therefore, all issues regarding petitioner's alleged conflict of interest and

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<sup>1</sup> Because the Commissioner has dismissed the claims related to petitioner's removal as SDR based on N.J.A.C. 6A:1-1.3(i), she does not reach the issue of whether Garwood's actions in removing petitioner were proper.

removal from the Garwood BOE have been resolved. Any opinion from the Commissioner regarding the propriety of the parties' actions would be merely advisory, with no practical effect. These issues are, therefore, moot.

Accordingly, the Initial Decision is adopted as the final decision in this matter, as modified herein. The petition of appeal is hereby dismissed.

IT IS SO ORDERED.<sup>2</sup>

  
ANGELINA ALLEN McMILLAN, Ed.D.  
ACTING COMMISSIONER OF EDUCATION

Date of Decision: October 18, 2023

Date of Mailing: October 19, 2023

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<sup>2</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**

OAL DKT. NO. EDU 01274-23

AGENCY REF. NO.:11-1/23

**SALVATORE PIARULLI,**

Petitioner,

vs.

**BOARD OF EDUCATION OF THE  
BOROUGH OF GARWOOD, UNION COUNTY,  
BOARD OF EDUCATION OF THE  
BOROUGH OF CLARK, UNION COUNTY,  
TRACEY ROLAND, ET ALS.,**

Respondent.

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**Ronald A. Berutti, Esq.** for Petitioner ((Murray-Nolan, Berutti, LLC, attorneys)

**Robert E. Levy, Esq.** for Respondent (Scarinci & Hollenbeck, LLC, attorneys)

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

Record Closed: April 21, 2023

Decided: July 27, 2023

**STATEMENT OF THE CASE**

In EDU 01274-23, Petitioner, Salvatore Piarulli (hereinafter “Piarulli”), challenges Respondent, Garwood Board of Education’s (hereinafter the “Garwood BOE”) action



replacing him as Garwood BOE's (a sending school district) Sending District Representative (hereinafter, "SDR") to the Clark Board of Education (hereinafter "Clark BOE", which is a receiving school district). Piarulli's January 21, 2023, Petition to the New Jersey Commissioner of Education is in two Counts and seeks the following relief: (1) a determination that a resolution passed on October 18, 2022 by Board-I (a term Piarulli uses to designate the Garwood BOE as constituted as of January, 2022) removing him as Garwood's SDR was *ultra vires* and void *ab initio*; (2) a determination that after his 10/18/22 removal from the position of SDR, all actions of the Clark BOE were null and void; (3) a declaration that Piarulli's filing and service of a Notice of Tort Claim on January 11, 2023 was primarily in the public interest; (4) a determination that the lawsuit filed by Board-II (a term Piarulli uses to designate the Garwood BOE as constituted after the November, 2022 Board of Education election) for the purpose of removing him from membership on the Garwood BOE is *ultra vires*; (5) an award of legal fees and costs; and (6) other further and reasonable relief.

### **PROCEDURAL HISTORY**

On February 2, 2023, Mark Chiarocca, J.S.C., the Presiding Judge of the Chancery Division, Union County, issued an Order dismissing without prejudice Garwood BOE's Verified Complaint (which had been filed on January 20, 2023) so as to allow the Commissioner of Education to review the matter.

The Department of Education's Office of Controversies and Disputes, on February 7, 2023 transmitted a matter filed by Garwood BOE to the Office of Administrative Law, where it was filed on February 7, 2023 as a contested case pursuant to N.J.S.A. 52:14B-1 to -15 and N.J.S.A. 52:14F-1 to 13. It was captioned Board of Education of the Borough of Garwood, Union County v. Salvatore Piarulli and assigned OAL Docket Number EDU 01176-23. Later, by the agreement of the parties, whereby Piarulli agreed to withdraw his Tort Claim Notice and the BOE agreed to withdraw its petition in EDU 01176-23, that matter was withdrawn during a teleconference on Monday, February 13, 2023.

On February 8, 2023, the Department of Education transmitted another matter, this one filed by Piarulli, to the Office of Administrative Law, where it was filed on February 8, 2023. This matter was assigned OAL Docket Number EDU 01274-23 and captioned Salvatore Piarulli v. Borough of Garwood, Board of Education of the Borough of Clark, Tracey Roland, Timothy Ryan, Al DelConte, Christine Gurriero, Vincent Basciano, Adrienne Barnes, Jennifer Uva, April Farrell, Tina Simitz, Linda Koenig, and Maureen Crawford.

On February 9, 2023 EDU 01176-23 and EDU 01274-23 were assigned to John P. Scollo, ALJ. As noted above, during the February 13, 2023 telephone Conference, EDU 01176-23 was withdrawn.

The matter now under consideration is a Motion, which Garwood BOE filed on February 10, 2023. Garwood BOE seeks to dismiss Piarulli's Petition filed under OAL Docket Number 01274-23 (Agency Number 11-1/23). Garwood BOE bases its Motion to Dismiss on two points. First, it contends that the Petition which Piarulli filed with the Commissioner of Education on January 24, 2023 was filed beyond the 90-day time limit allowed by N.J.A.C. 6A:3-1.3 and therefore is time-barred. Second, Garwood BOE also contends that it has the authority to appoint or to remove any board member to / from the position of Sending District Representative to the Clark BOE. Its vote on a resolution to replace Piarulli as SDR took place on October 18, 2022 and was done within its authority under N.J.S.A. 18A:11-1(d). Garwood BOE notes that not only was the BOE's October 18, 2022 action legal, but Piarulli does not cite any statutory or regulatory basis on which to challenge the BOE's action.

### **FACTUAL DISCUSSION**

In Piarulli's Sur-Reply he provided a useful Timeline, which the Tribunal will utilize, along with other chronological references in the parties' submissions, to illustrate the matter at hand. The chronology set forth below is not a verbatim account, but it sets forth events, which the Tribunal deems particularly significant. The Tribunal will intersperse pertinent facts and also the parties' contentions / positions / interpretations of laws and regulations throughout the following discussion.

## **Timeline**

### **November, 2021 and January, 2022**

Piarulli was elected to the Garwood BOE in the November, 2021 election, he was sworn-in in January, 2022. At the BOE's reorganization meeting, the BOE appointed him as Garwood's Sending District Representative to the BOE of Clark pursuant to N.J.S.A. 18A:38-8.1 and 8.2. Clark is where Garwood sends its high school students. Throughout the course of this Initial Decision Garwood will be referred to as a "sending district" and Clark will be referred to as a "receiving district".

### **October 18, 2022**

On October 18, 2022, Garwood BOE voted in favor of a resolution to replace Piarulli as its SDR to the Clark BOE with another board member. Piarulli contends that this was the result of defamatory statements and retaliation by the BOE's president, whom he claims is a "political rival".

Piarulli states that sometime after the vote that replaced him as SDR he had a conversation with Garwood BOE's attorney (John G. Geppert). During that conversation, he inquired about the legal basis for the BOE's action. Piarulli states that during that conversation Geppert responded by citing N.J.S.A. 18A: 38-8.1 and also "Robert's Rules of Order". Piarulli believes that these authorities were insufficient bases for replacing him and he concluded that the vote to replace him was therefore illegal.

N.J.A.C.. 6A:3-1.3 (i) sets forth a 90-day time limit for the filing of a Petition with the Office of the Commissioner of Education, wherein a Petitioner seeks relief from an action taken by a board of education. Thus, if Piarulli wanted to contest the BOE's October 18, 2022 action that removed him as the position of SDR, the 90-day limit for filing a Petition, as measured from October 18, 2022, would expire on January 16, 2023.

January 11, 2023

On January 11, 2023, Piarulli filed a Notice of Claim in which he seeks monetary and non-monetary relief from the Garwood BOE. Piarulli maintains that his \$10,000,000 monetary claim was a “placeholder” on the Notice of Claim form, but he admits that the Notice of Claim does indeed seek monetary compensation for the tort of defamation. However, he claims that his primary reason for filing the Notice of Claim was the public interest. He claims that the public interest was violated on October 18, 2022 when the BOE removed the people’s duly-elected Board member from the position of SDR to the Clark BOE.

January 16, 2023, January 20, 2023 and January 24, 2023

January 16, 2023 marked ninety days from the date (October 18, 2022) that the Garwood BOE voted to replace Piarulli as the SDR to the Clark BOE.

On January 20, 2023, the Garwood BOE filed a Verified Complaint and Order to Show Cause in the Superior Court seeking to prevent Piarulli from serving on the Garwood BOE in any capacity, i.e., to remove Piarulli from membership on the Garwood BOE. The BOE’s reason for filing these papers was that Piarulli’s filing of the Notice of Claim on January 11, 2023 put him into a conflict of interest with his BOE obligations and thus mandated either his resignation from the BOE or his removal from the BOE pursuant to N.J.S.A. 18A:12-2. N.J.S.A. 18A:12-2 is entitled “Inconsistent Interests or Office Prohibited”. It encompasses situations where a board member may have a conflict of interest. On January 20, 2023, Judge Thomas Walsh granted the BOE’s application for relief, issuing a Temporary Restraining Order against Piarulli, with the proviso that Piarulli could move to vacate the restraints on two days’ notice.

On January 24, 2023, Piarulli filed his Petition with the Commissioner in which he sought to overturn the resolution of October 18, 2022. January 24<sup>th</sup> was eight days beyond January 16<sup>th</sup>. Based on this fact, the BOE contends that Piarulli was late in filing his Petition and therefore his Petition is time-barred and, as such, should be dismissed. However, Piarulli contends that his Petition complains not only about the

BOE's action dated October 18, 2022, but also complains about the BOE's continuing tortious and illegal actions taken against him up to and including January 20, 2023 when Garwood BOE filed a Verified Complaint and Order to Cause in Superior Court seeking to oust Piarulli from membership on the Garwood BOE. Thus, Piarulli's response to Garwood BOE's time-limit argument is that the ninety-day time limit actually started to run from January 20, 2023 (with a consequent ninety-day time limit ending on April 20, 2023). Piarulli notes that the January 24, 2023 filing of his Petition with the Commissioner would be well within the time limit.

Piarulli, citing New Jersey's acceptance of the Continuing Tort Doctrine, contends that Garwood BOE has engaged in continuing tortious conduct against him, which culminated on January 20, 2023 when it filed the Verified Complaint and Order To Show Cause to have him removed from his membership on the BOE. The Garwood BOE points out that Piarulli filed a Notice of Claim on January 11, 2023 in which he sought \$10,000,000 from the BOE as compensatory damages for alleged defamation. The BOE contends that it filed the Order to Show Cause and Verified Complaint on January 20, 2023 because, if Piarulli were to remain on the Garwood BOE while the question of his conflict of interest remained an open question, his presence would interfere with the BOE's ability to function. Thus Garwood BOE contends that it was required by N.J.S.A. 18A:12-2 to take immediate action. Both sides agree that the text of N.J.S.A. 18A:12-2 states that no member of a Board of Education may serve or continue to serve on a BOE if he has a direct or indirect interest in a claim against the BOE. Thus, Garwood BOE contends that Piarulli refused to resign and that its filing of the January 20, 2023 Verified Complaint and Order to Show Cause was a necessity required by the law and was not a tortious act.

Piarulli admits that he filed the Notice of Claim on January 11, 2023 in which he seeks non-monetary relief and a claim for money damages from the BOE. While Piarulli admits that his \$10,000,000 claim does indeed say that he seeks compensation for the tort of defamation, the \$10,000,000 figure was a mere placeholder on a form and that his primary reason for filing the Notice of Claim was to protect the public's interest in having its duly-elected BOE member continue to serve in a capacity to which he was appointed by the BOE (i.e., serving as the BOE's SDR).

January 24, 2023

On January 24, 2023 Piarulli, responding to Garwood BOE's Verified Complaint and Order to Show Cause, filed his own Verified Complaint and Order to Show Cause in Superior Court, Union County, Chancery Division alleging that the BOE's actions were illegal and seeking to vacate the January 20, 2023 Temporary Restraining Order issued by Judge Walsh and to dismiss Garwood's Verified Complaint.

February 2, 2023

On February 2, 2023, Mark P. Ciarrocca,, P.J. Cv., Union County Superior Court, observing that neither N.J.S.A. 18A: 6-9 nor N.J.S.A. 18A:12-2 state that the Commissioner of Education has the exclusive jurisdiction [to decide the controversy], an administrative remedy was nevertheless available. Judge Ciarrocca therefore dissolved the temporary restraints set forth in Judge Walsh's January 20, 2023 Order and dismissed Garwood BOE's Verified Complaint so as to allow review by the Commissioner of Education, pursuant to N.J.S.A. 18A:6-9.

The above-stated timeline of events and the recitation of the facts as set forth above is consistent with the parties' submissions. The Tribunal, having read all the submissions thoroughly, believes it has set forth all the facts of consequence and considers additional nuances and interpretations of facts as inconsequential.

**EXPOSITION OF THE ISSUES, ANALYSIS OF THE PARTIES' ARGUMENTS, and FINDINGS OF FACT**

The analysis of the parties' positions in this matter must begin with an exposition (in the form of questions) of the issues presented.

The questions presented in this matter are as follows:

- (1) Under all relevant legal authorities, did the Garwood BOE have the authority to appoint, remove, or replace one of its members as its Sending District Representative?
- (2) Was the Garwood BOE's removal of Piarulli as Sending District Representative and its replacement of Piarulli with another BOE member legal?
- (3) Was Piarulli's filing of his Petition to the Commissioner of Education on January 11, 2023 timely?

Question Number 1: Under all relevant legal authorities, did the Garwood BOE have the authority to appoint, remove, or replace one of its members as its Sending District Representative?

#### Piarulli's Position

It is Piarulli's position that Garwood BOE lacked the authority to remove him from the position of Sending District Representative and did not have the authority to replace him as the SDR. Piarulli contends that he could only be removed from the position of SDR by the Commissioner and then only after he is afforded a hearing. Piarulli contends that the BOE's action on October 18, 2022 was politically motivated and /or done for unethical reasons.

Piarulli also contends that his filing of the Notice of Claim was done primarily to protect the public interest. His argument is that this is the type of situation that calls for the type of "close factual analysis" mentioned in Board of Education of Sea Isle City v. Kennedy, 196 N.J. 1 (2008) and which should not require his removal from office.

#### Comment by the Tribunal

The Statute that gives a BOE the authority to appoint one of its members to the position of SDR is N.J.S.A. 18A:38.1 and 38.2. (See APPLICABLE LAW section for text.) The statutes state that the local BOE has the authority to appoint one of its members to the

position of SDR, that it should do so at its organizational meeting, and that the appointment is limited to one year. N.J.S.A. 18A:38.1 and 38.2 are silent about the subject of removing or replacing the SDR. Nothing in the statute states or implies that the local BOE is unable to remove or replace the person it has appointed as SDR.

### The BOE's Position

The Garwood BOE recognizes that the Commissioner, per N.J.S.A. 18A:6-9, has jurisdiction over all controversies and disputes arising under the school laws. The Garwood BOE's position is that N.J.S.A. 18A:11-1 gives local BOE's certain powers and authority regarding self-governance. In particular, Garwood cites 18A:11-1 (d) as granting a local BOE the authority to "Perform all acts and do all things consistent with law and the rules of the state board, necessary for the lawful and proper conduct ... of the public schools of the district." Thus, a BOE may remove a member whom it previously appointed as SDR from the position of SDR in its discretion.

### Comment by the Tribunal

Garwood's point would be that just as the local board has the authority to enact, amend, or repeal its own by-laws, or to hire, replace or discharge providers of goods or professional services, etcetera, it has the right to appoint, in its own discretion, which member shall represent the BOE in the position of SDR. Although N.J.S.A. 18A:38-8.2 states that the SDR's term is limited to one year, companion statutes demonstrate circumstances where the SDR serves less than a full year. An instance of such a situation is set forth in N.J.S.A. 18A: 38-8.2(c) which provides for the "rotation" of people in the position of SDR.

## **ANALYSIS AND FINDINGS OF FACT AS TO QUESTION ONE**

I agree with Judge Ciarrocca's observation, as stated in his February 2, 2023 Order, that neither N.J.S.A. 18A: 6-9 nor N.J.S.A. 18A:12-2 confer exclusive jurisdiction on the Commissioner of Education over the present controversy.



I **FIND** that the Statutes that give a BOE the authority to appoint one of its members to the position of SDR are N.J.S.A. 18A:38-8.1 and 8.2. (See APPLICABLE LAW section for text.) I **FIND** that these statutes state that the local BOE has the authority to appoint one of its members to the position of SDR, that it should do so at its organizational meeting, and that the appointment is limited to one year. I **FIND** that N.J.S.A. 18A:38-8.1 and 38.2 are silent about the subject of removing or replacing an SDR. Nothing in the statutes state or imply that a local BOE is unable to remove or replace a person it has appointed as an SDR. I **FIND** that this silence means that the power to appoint implies a correlative power to remove or replace.

This Tribunal recognizes that local BOEs are creatures of the State and may exercise only those powers granted to it by the Legislature either expressly, by necessity, or by fair implication. Atlantic City Educational Ass'n v. Board of Educ. of the City of Atlantic City, 299 N.J. Super. 649, 691 (App. Div. 1997), certification denied, 152 N.J. 192. I **FIND** that the principle of self-governance set forth in N.J.S.A. 18A:11-1 is obviously a grant of authority from the Legislature.

I **FIND** that there is no disagreement between the parties that BOE members are elected by the voters of the school district. In regard to the provisions contained in N.J.S.A. 18A:38-8.1 and 8.2, I **FIND** that committee assignments, chairmanships, and other designations are made by the BOE members themselves, not by the voters.

I **FIND** that the elected position of Board Member differs from the appointed position of SDR. I **FIND** that the appointment of a BOE member to the position of SDR is not something that the voters decide; it is one that the BOE members themselves decide collectively as a board in the exercise of their own discretion.

Piarulli's argument appears to be that his filing of the Notice of Claim protected the public's right to have him complete his one-year term as SDR, and as such should be afforded a fact-sensitive analysis under Kennedy. I **FIND** that there is no such right because N.J.S.A. 18A:38-8.1 and 8.2 clearly demonstrate that the BOE, not the voters, appoint the SDRs.

The Tribunal is aware of Piarulli's claim that the BOE's action on October 18, 2022 was politically motivated and / or was done for unethical reasons. I **FIND** that these are allegations of unethical conduct by BOE members. As such, I **FIND** that they are not matters arising under the school laws.

Question Number 2: Was the Garwood BOE's removal of Piarulli as Sending District Representative and its replacement of Piarulli with another BOE member legal?

(See Analysis and Findings set forth for Question One.)

Question Number 3: Was Piarulli's filing of his Petition to the Commissioner of Education on January 11, 2023 timely?

#### Piarulli's Position

The vote to remove Piarulli as SDR was taken on October 18, 2023. Ninety days later would be January 16, 2023. Piarulli filed his Petition on January 24, 2023. January 24, 2023 was eight (8) days beyond the allowable time limit as measured from the October 18, 2023 vote. However, Piarulli contends that Garwood BOE's filing of the Verified Complaint and Order to Show Cause on January 20, 2023 was a tortious act. Piarulli's argument is based on the Continuing Tort Doctrine. The Continuing Tort Doctrine is recognized in New Jersey. As stated in Wilson v. Wal-Mart Stores, 158 N.J. 263, 272 (1999),

When an individual is subject to a continual, cumulative pattern of tortious conduct, the statute of limitations does not begin to run until the wrongful action ceases.

Thus, the Continuing Tort Doctrine is a principle of law that recognizes that when tortious behavior continues or repeats over a prolonged period of time, that course of conduct should be treated as a whole such that the statute of limitations will not begin to run until the course of conduct ends.

Piarulli contends that Garwood BOE's tortious act on January 20, 2023 (the filing date of the Verified Complaint and Order to Show Cause) was part and parcel of the BOE's earlier unethical and tortious conduct on October 18, 2022. Therefore, Piarulli argues, under the Continuing Tort Doctrine the "clock", the ninety-day limit of N.J.A.C.6A:1-1.3(i), must be re-set from October 18, 2022 to April 20, 2023. Since the clock was re-set by Garwood's continuing tortious action, his filing of his Petition on January 24, 2023 was well within the ninety-day time limit and therefore cannot be adjudicated to have been filed late.

Piarulli contends that Garwood BOE's filing of a Verified Complaint and Order to Show Cause on January 24, 2023 to remove him from the BOE was part of a continuing series of tortious actions instigated by people with unethical and political motives.

#### Garwood BOE's Position

In its argument, Garwood BOE looks to N.J.S.A. 18A:12-2, which provides that no BOE member shall be interested, directly or indirectly, in a claim against the BOE. Garwood BOE maintains that the meaning of this statute is that when a BOE member has a conflict of interest with the BOE, he cannot continue to serve on the BOE. He must choose between discontinuing the claim or resigning from the BOE. The statute also means that if he does not discontinue the claim, and will not resign from the BOE, then the BOE must remove him.

Garwood BOE contends that when Piarulli filed his Notice of Claim against the BOE on January 11, 2023, his own monetary interest (his assertion of a claim for money damages against Garwood BOE) instantly conflicted with his duty to uphold the interests of Garwood BOE. Garwood BOE stated that Piarulli refused to resign from the BOE, thus forcing it to take action to remove him from the BOE. So, Garwood argues that when it filed its Verified Petition and Order to Show Cause to remove Piarulli from Garwood BOE, it was actually fulfilling its duty to protect the interests of the BOE and was not engaging in any unethical, tortious, or illegal activity. That is to say, its filing of the Verified Complaint and Order to Show Cause was not even a tortious act.

So, logically, there can be no *continuing* tortious activity. Therefore, argues Garwood, the Continuing Tort Doctrine is not applicable to the matter at bar.

### **ANALYSIS AND FINDINGS OF FACTS AS TO QUESTION THREE**

On the issue of timeliness, I **FIND** that N.J.S.A. 18A:12-2 requires that when a BOE member is in a conflict situation, he must either abandon the claim that has placed him into a conflict with his BOE duties or he must either resign or face removal. I **FIND** that Garwood BOE filed the Verified Complaint and Order To Show Cause on January 20, 2023 because Piarulli refused to resign and because it was indeed duty-bound under the statute to take immediate action to remove him from the BOE due to the conflict of interest created by his filing of the Notice of Claim on January 11, 2023.

As noted above, Piarulli alleges that Garwood BOE's filing of the Verified Complaint and Order to Show Cause on January 20, 2023 was a tortious act. I **FIND** that Garwood BOE's filing of the Verified Complaint and Order to Show Cause on January 20, 2023 was not a tortious act. The only other tortious acts Piarulli alleges are (1) defamation (which allegedly occurred on or before October 18, 2022, for which Piarulli has presented no evidence beyond his mere allegation, and which is an issue beyond the jurisdiction of the OAL) and (2) Garwood BOE's vote to remove Piarulli as the SDR on October 18, 2022. I **FIND** that there was no other tortious act that would support the application of the Continuing Tort Doctrine. Since the October 18, 2022 vote was the only other act on which Piarulli could base his Petition, then the N.J.A.C. 6A:3-1.3(i)'s ninety-day time limit applies. The vote to remove Piarulli as SDR was taken on October 18, 2022. Ninety days later would be January 16, 2023. Piarulli filed his Petition on January 24, 2023. January 24, 2023 was eight (8) days beyond the allowable time limit. I therefore **FIND** that Piarulli's Petition was filed beyond the allowable time limit.

### **APPLICABLE LAW**

For the matter at bar the applicable Statutes and Regulations are:

- (1) N.J.S.A. 18A:6-9;
- (2) N.J.S.A. 18A:38-8.1 and 8.2;
- (3) N.J.S.A. 18A:11-1(d);
- (4) N.J.S.A. 18A:12-2;
- (5) N.J.S.A. 18A:12-3; and
- (6) N.J.A.C. 6A:3-1.3 (i).

N.J.S.A. 18A:6-9 states, in applicable part,

The commissioner shall have jurisdiction to hear and determine, without cost to the parties, all controversies and disputes arising under the school laws, excepting those governing higher education, or under the rules of the state board or of the commissioner. For the purposes of this Title, controversies and disputes concerning the conduct of school elections shall not be deemed to arise under the school laws.

N.J.S.A. 18A:38-8.1 states, in applicable part,

In addition to the members of the board of education of a Type I and Type II school district provided by law, in a school district which is receiving pupils from another district or districts pursuant to N.J.S.A. 18A:38-8, there shall be an additional member as provided pursuant to section 2 of this act, to represent the board of education of each sending district. Any additional member shall be a member of the board of education of a sending district designated annually by the board of that district and shall be eligible to vote on the following matters before the receiving district board of education:

(The four types of matters set forth as “a” through “d”, have been omitted as irrelevant to the matter before this Tribunal.)

N.J.S.A. 18A:38-8.2 states, in applicable part,

A school district which is sending pupils to another school district pursuant to N.J.S.A. 18A:38-8 shall have representation on the board of education of the receiving school district as follows:

- (a) [omitted by the Tribunal];

(b;c) [omitted by the Tribunal, except to note that these sections provide for the rotation of SDRs]

(d) A representative of a sending board of education shall be designated at the meeting of the board which is closest in time to the annual organizational meeting of the receiving district board of education and shall serve a one-year term beginning with the organizational meeting of the receiving district board. The representative shall be subject to the rules and procedures of the receiving district board of education.

(e) [omitted by the Tribunal].

N.J.S.A. 18A:11-1(d) states:

The board shall –

- a. Adopt an official seal;
- b. Enforce the rules of the state board;
- c. Make, amend and repeal rules, not inconsistent with his title or with the rules of the state board, for its own government and the transaction of its business and for the government and management of the public schools and public school property of the district and for the employment, regulation of conduct and discharge of its employees, subject, where applicable, to the provisions of Title 11, Civil Service, of the Revised Statutes; and
- d. Perform all acts and do all things, consistent with law and the rules of the state board, necessary for the lawful and proper conduct, equipment and maintenance of the public schools of the district.

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

No member of a board of education shall be interested directly or indirectly in any contract with or any 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.

N.J.S.A. 18a:12-3 states, in applicable part:

Whenever a member of a local or regional board of education shall cease to be a bona fide resident of the district, or of any constituent district of a consolidated or regional district which he represents, or shall become mayor or a member of the governing body of a municipality, his membership in the board shall immediately cease; and, any member who fails to attend three consecutive meetings of the board without good cause may be removed by it.

N.J.A.C.6A:3-1.3 (i) states, in applicable part,

The petitioner shall file a petition no later than the 90<sup>th</sup> day from the date of receipt of the notice of a final order, ruling, or other action by the district board of education, individual party, or agency, that is the subject of the requested contested case hearing. This rule shall not apply in instances where a specific statute, regulation, or court order provides for a period of limitation shorter than ninety days for the filing of a particular type of appeal.

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.

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 basis. 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, he cannot continue to remain on the BOE and he can be removed.

## **LEGAL ANALYSIS AND CONCLUSIONS**

### **CONCLUSIONS REGARDING QUESTION ONE**

Having found that N.J.S.A. 18A:38-8.1 and 8.2 authorize a local BOE to appoint, remove and replace SDRs, I **CONCLUDE** that Garwood BOE had the authority to remove someone it had previously appointed from the position of SDR.

Having found that N.J.S.A. 18A:11-1(d) grants self-governance to local BOEs, it follows, and I **CONCLUDE** , pursuant to the provisions of N.J.S.A. 18A:38-8.1 and 8.2 and of N.J.S.A. 18A:11-1(d) and of N.J.S.A. 18A:12-3, that Garwood BOE had the authority, in its discretion, to appoint, remove, and replace any member serving as an SDR. I **CONCLUDE** that Garwood BOE did not act *ultra vires* when it voted to remove Piarulli from the position of SDR. I **CONCLUDE** that Garwood BOE's removal of Piarulli from the position of SDR was legal. Having been legally removed from the position of SDR, I **CONCLUDE** that Piarulli has no further right to serve as SDR.

Having found that inasmuch as the position of SDR is a position that the BOE makes in its own discretion, I **CONCLUDE** that a BOE does not need "cause" to remove the SDR from that position. I further **CONCLUDE** that Piarulli did not have a right, in the name of the public interest, to continue to serve the entire full year of his appointment as SDR, but only served as SDR at the discretion of the Garwood BOE.

I **CONCLUDE** that when Piarulli filed his Notice of Claim he was not protecting any of the public's rights. I **CONCLUDE** that when Piarulli filed his Notice of Claim he asserted a monetary claim for his own benefit.

Having found that Piarulli's allegations that Garwood BOE's vote on October 18, 2022 was the result of political chicanery (i.e., unethical conduct), I **CONCLUDE** that

primary jurisdiction over such matters would not lie with the Commissioner of Education, but with the School Ethics Commission.

### **CONCLUSIONS REGARDING QUESTION TWO**

Having **CONCLUDED** that Garwood has the authority to appoint, remove, and replace members to and from the position of SDR, it follows, and I **CONCLUDE** that Garwood's removal of Piarulli from the position of SDR was legal and I **CONCLUDE** that its appointment of another of its members to the position of SDR was legal.

### **CONCLUSION REGARDING QUESTION THREE**

Having found that Piarulli's Petition was filed beyond the allowable time limit, I **CONCLUDE** that his Petition must be dismissed pursuant to the time limit set forth in N.J.A.C. 6A:3-1.3(i).

### **ORDERS**

Pursuant to the foregoing conclusions, it is hereby **ORDERED** that the Petition filed by Piarulli on January 24, 2023 is time-barred and must be **DISMISSED** with prejudice; and it is further **ORDERED** that this **ORDER** shall be served upon the parties via email and said parties shall acknowledge receipt of same within seven (7) days.

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 black ink, reading "John P. Scollo", enclosed in a thin yellow rectangular border.

July 27, 2023  
DATE

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

Date Received at Agency: \_\_\_\_\_

Date Mailed to Parties:  
db \_\_\_\_\_