

328-25
OAL Dkt. Nos. 09738-22 and 04893-23 (consolidated)
Agency Dkt. Nos. 250-9/22 and 112-4/23

New Jersey Commissioner of Education

Final Decision

Mellk Cridge, LLC,

Petitioner,

v.

Board of Education of the City of Trenton, Mercer
County,

Respondent,

AND

Mellk Cridge, LLC,

Petitioner,

v.

Board of Education of the City of Trenton, Mercer
County,

Respondent.

The record of these consolidated matters, the Initial Decision of the Office of Administrative Law (OAL), and the exceptions filed by the petitioner pursuant to *N.J.A.C. 1:1-18.4*, have been reviewed and considered. The Trenton Board of Education (Board) did not file a reply to petitioner's exceptions.

Petitioner served as legal counsel to seven employees of the Board who were investigated by the New Jersey Department of Children and Families, Institutional Abuse Investigation Unit (IAIU).

Petitioner sought indemnification of its legal fees and costs from the Board, pursuant to *N.J.S.A.* 18A:16-6. Following cross-motions for summary decision, the Administrative Law Judge (ALJ) concluded that petitioner's claims failed because it had not notified the Board of the indemnification requests within a reasonable period of time after learning of the charges against the employees. Accordingly, the ALJ granted the Board's motion for summary decision.

In its exceptions, petitioner argues that the ALJ imposed a *de facto* statute of limitations for indemnification requests, without having the authority to do so. Petitioner also contends that the ALJ's decision would require employees under IAIU investigation to seek indemnification before their claims accrued. Finally, according to petitioner, it would be impossible for the Board to take all the steps necessary to assign counsel to an employee before an IAIU investigation concluded, such that requiring notice to the Board would leave the employee without the benefit of legal counsel during the course of the IAIU investigation.

Upon review, the Commissioner concurs with the ALJ that petitioner failed to give the Board reasonable notice of its indemnification requests, for the reasons detailed in the Initial Decision. An employee seeking reimbursement from a board of education pursuant to *N.J.S.A.* 18A:16-6 "cannot wait until the action is completed and must provide the school board with reasonable notice after the initiation of the proceeding." *Azzaro v. Bd. of Educ. of the City of Trenton*, 477 *N.J. Super.* 427, 432 (App. Div. 2023). The Commissioner concludes that petitioner's delay in requesting indemnification until months or years after the conclusion of the IAIU investigations was not reasonable.

The Commissioner does not find petitioner's exceptions persuasive. While IAIU timelines are shorter than those that may be involved in civil litigation, in this matter, the record demonstrates that petitioner's representation of each employee lasted at least 40 days. Petitioner's assertion that

the Board would have been unable to review an indemnification request and assign counsel to the employees within that period of time is speculative and not supported by anything in the record. The Commissioner declines to accept petitioner's assumption, particularly when petitioner's failure to give the Board notice deprived the Board of any opportunity to demonstrate that it could complete those steps in a timely manner.

Furthermore, even if petitioner is correct that the Board could not have assigned counsel before the IAIU investigations were concluded, the Board's response to the request for indemnification is irrelevant; what *Azzaro* holds is that the party seeking indemnification must make the request within a reasonable time of learning about the charges. *Id.* at 442-443. Indeed, the Appellate Division specifically noted that it was aware that a board of education may deny an employee's indemnification request, but "the fact that the Board may have declined petitioners' request for defense costs is not a basis to refrain from requesting defense and indemnification under *N.J.S.A. 18A:16-6.*" *Id.* at 441. Similarly, the Commissioner concludes that, here, the fact that the board may have failed to respond to petitioner's requests – either quickly or at all – was not a basis to refrain from requesting defense and indemnification.

Contrary to petitioner's assertion, the ALJ did not create an immediate notice requirement that is applicable in all circumstances, or a *de facto* statute of limitations. Citing to *Azzaro*, the ALJ acknowledged that what constitutes reasonable notice is a fact-specific inquiry, and she found that immediate notice would have been reasonable under the circumstances present in this matter. Even if the Commissioner were to reject the "immediate" notice that the ALJ found reasonable here, the fact remains that petitioner represented the employees for periods ranging from approximately one and half months to three months. The Commissioner concludes that petitioner's failure to make its indemnification requests during those periods was unreasonable, and it was further compounded by

petitioner's failure to request indemnification for periods of one month to nearly two years after the investigations were concluded.

Finally, the Commissioner rejects petitioner's argument that its claims did not accrue until the IAIU issued its findings that the allegations were unfounded. The Appellate Division rejected a similar ripeness argument in *Azzaro*, concluding that "unlike *N.J.S.A. 18A:16-6.1*, which requires an employee to wait until the dismissal of a criminal action to seek reimbursement of legal fees, *N.J.S.A. 18A:16-6* has no such requirement." *Id.* at 441. Moreover, the Appellate Division concluded that if the board of education denied the employee's indemnification request because it had determined that her actions were outside the scope of her employment, the employee could have challenged that determination; nonetheless, the employee was "obligated to request the Board to provide defense costs even if the request may have initially been rejected." *Ibid.*

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

IT IS SO ORDERED.¹


COMMISSIONER OF EDUCATION

Date of Decision: June 27, 2025
Date of Mailing: June 30, 2025

¹ 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

SUMMARY DECISION

OAL DKT. NO. EDU 09738-22

AGENCY DKT. NO. 250-9/22

(CONSOLIDATED)

MELLK CRIDGE, LLC,

Petitioner,

v.

**CITY OF TRENTON, BOARD
OF EDUCATION, MERCER
COUNTY,**

Respondent,

AND

MELLK CRIDGE, LLC

Petitioner,

v.

**CITY OF TRENTON, BOARD
OF EDUCATION, MERCER
COUNTY,**

Respondent.

OAL DKT. NO. EDU 04893-23

AGENCY DKT. NO. 112-4/23

Edward A. Cridge, Esq. and Arnold M. Mellk, Esq., for petitioner Mellk Cridge,
LLC (Mellk Cridge, LLC, attorneys)

James Rolle, Jr., Esq., for respondent Trenton Board of Education
(Trenton Board of Education general counsel, attorneys)

Record Closed: February 3, 2025

Decided: April 10, 2025

BEFORE **JUDITH LIEBERMAN**, ALJ:

STATEMENT OF THE CASE

Petitioner law firm Mellk Cridge LLC, represented seven employees of respondent City of Trenton Board of Education (“Board”) who were the subjects of investigations by the New Jersey Department of Children and Families, Institutional Abuse Investigation Unit (“IAIU”). Petitioner seeks indemnification of its legal fees and costs, pursuant to N.J.S.A. 18A:16-6, from respondent. The parties filed cross-motions for summary decision.

PROCEDURAL HISTORY

Petitioner filed its petitions with the Commissioner of the Department of Education (“Department”) on September 16, 2022, (EDU 09738-22), and April 26, 2023, (EDU 04893-23). The Department of Education transmitted the matters to the Office of Administrative Law, where on October 31, 2022, and June 2, 2023, respectively, they were filed as contested cases. N.J.S.A. 52:14B-1 to -15; N.J.S.A. 52:14F-1 to -13. Because the matters shared material facts and presented the same legal issues, they were consolidated on August 2, 2023.

Orders of Inactivity were issued on January 19, 2023¹, August 2, 2023, February 15, 2024, and August 26, 2024, pending the disposition of Azzaro v. Board of Education of Trenton, 477 N.J. Super. 427 (App. Div. 2023), certif. denied, 258 N.J. 438 (2024), because the issue presented in that case was substantially similar to the issue presented here. The Order of Inactivity was lifted after the Supreme Court denied certification of the

¹ The January 19, 2023, Order of Inactivity applied to only EDU 09738-22.

Appellate Division's decision in Azzaro. Petitioner and respondent filed their cross-motions for summary decision on February 3, 2025, and the record for the motions closed that day.

FACTUAL DISCUSSION

The following facts, taken from the pleadings, briefs, and supporting certifications, are undisputed. I, therefore, **FIND** it as **FACT**.

1. A.D., D.C., D.A., I.P., L.D., T.Y. and U.A. ("the employees") were employed by the Board during the times relevant to the consolidated matters.
2. The employees were the subjects of investigations conducted by the IAIU concerning allegations of abuse and/or neglect of students who attended school in the City of Trenton School District ("District").
3. Petitioner was assigned by the employees' union, the New Jersey Education Association ("NJEA") to represent the employees throughout each of the IAIU investigations.
4. The IAIU concluded that the allegations against each of the employees was unfounded pursuant to N.J.A.C. 3A:10-7.3(c)(4).
5. Petitioner's legal services for each employee began and ended on the following dates:

Employee	Start of Representation	End of Representation
A.D	September 15, 2021	December 21, 2021
D.C	April 1, 2022	May 11, 2022
D.A.	October 26, 2022	December 9, 2022
I.P.	September 21, 2018	December 20, 2018
L.D.	May 16, 2022	July 12, 2022
T.Y.	February 6, 2023	March 29, 2023

U.A.	December 6, 2022	February 22, 2023
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[P-E.]

6. The petition that was filed with respect to A.D., D.C., I.P. and L.D. is dated September 16, 2022, and was filed with the Department the same day. P-A.
7. The petition that was filed with respect to D.A., T.Y. and U.A. is dated April 26, 2023, and was filed with the Department the same day. P-B, OAL-1.
8. Neither petitioner nor the employees asked the Board to provide for the employees' defense or to indemnify them before they filed their petitions for indemnification with the Department. Certification of James Rolle, Jr., Esq. ("Rolle Cert.") at ¶ 6.

Parties' Arguments

Petitioner asserts that it is entitled to indemnification because two prerequisites to indemnification under N.J.S.A. 18A:16-6 are satisfied. First, the allegations made against the employees "arose from [their] performance of their duties as employees of the [Board]" because the IAIU found that the allegations were unfounded. Pet'r's Brf. at 4 - 5. Second, petitioner provided the Board with reasonable notice of its intention to request indemnification. It was unable to notify the Board before the IAIU investigations concluded because IAIU investigations are required to proceed significantly more quickly than other proceedings. Due to the rapid pace of these investigations, boards of education are necessarily unable to assess requests for representation and assign counsel in a timely manner.

Respondent does not address whether the actions that were the subject of the investigations arose from the employees' performance of their job duties. It focuses on petitioner's failure to provide reasonable notice of its intentions until after the investigations were over. Had petitioner made a timely request for defense of indemnification, the Board could have taken steps to manage the costs of the

investigation, such as using its in-house attorneys or the law firms with which had contractual agreements.

LEGAL ANALYSIS AND CONCLUSION

Standard of Review

Summary decision is appropriate when there is no genuine issue as to any material fact. Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520, 540 (1995). A “determination whether there exists a ‘genuine issue’ of material fact that precludes summary judgment requires the motion judge to consider whether the competent evidential materials presented, when viewed in the light most favorable to the non-moving party, are sufficient to permit a rational factfinder to resolve the alleged disputed issue in favor of the non-moving party.” Ibid. Because the material facts are not in dispute, summary decision is appropriate.

Indemnification

“Under the civil indemnification statute, N.J.S.A. 18A:16-6, a board of education employee may be indemnified for attorney's fees and costs incurred defending civil actions arising out of an act or omission that took place in the course and scope of employment duties.” L.A. v. Board of Educ., City of Trenton of Mercer Cnty., 221 N.J. 192, 201–202 (2015). In Bower v. Bd. of Educ., 149 N.J. 416 (1997), the Supreme Court addressed the statutory prerequisite. It held that the statute requires “mere proof by a preponderance of the evidence that the act on which the charges are predicated arose out of and in the course of performance of the duties of employment.” Id. at 434. See also Waters v. Bd. of Educ. of Toms River, 2011 N.J. Super. Unpub. LEXIS 3083, *12 (December 22, 2011) (“In the context of the defense of a civil action, the outcome of the litigation is irrelevant, the statute protects both successful and unsuccessful litigants as long as” the cause of action arose out of the performance of the employee’s duties and occurred in the performance of the duties) (citing Lonky v. Bd. of Educ. of Bayonne, OAL

Dkt. No. EDU 07205-05, final decision, (July 7, 2008) (slip op. at 3), <http://lawlibrary.rutgers.edu/oal/search.shtml>).²

Here, the employees were alleged to have engaged in improper conduct with students. The IAIU concluded that the allegations were “unfounded” which means that “there is not a preponderance of the evidence indicating that a child is an abused or neglected child . . . and the evidence indicates that a child was not harmed or placed at a risk of harm.” N.J.A.C. 3A:10-7.3(c)(4). There is no evidence in the record concerning the employees’ actions other than this determination. As they were exonerated and there is no evidence in the record indicating that they engaged in acts outside the scope of their duties, the undisputed evidence supports the conclusion that each employee was acting within the scope of their duties at the relevant time.

However, parties seeking reimbursement from a board of education pursuant to N.J.S.A. 18A:16-6 must act “within a reasonable period of time after learning of the charges . . . to put the Board on notice of [their] request for defense costs.” Azzaro, 477 N.J. Super. at 443. The court did not establish a bright-line rule concerning the timing of the notice. Rather, “[w]hat constitutes a reasonable time may be a fact-specific inquiry in certain cases.” Ibid.³ The underlying principle is that the employer should at least be aware of the possibility of costs: it “should have some control over costs, and at least be in a position to know in advance what those costs will be.” Id. at 442, n.7 (quoting Edison v. Mezzacca, 147 N.J. Super. 9, 15 (App. Div. 1977)).

In so holding, the court directed employees and their counsel to not prejudge the outcome. Instead, they should allow boards of education to evaluate their ability and willingness to provide representation and offer alternatives if they decide they cannot provide representation at the time of the request. By way of example, the prospect of a conflict of interest between the employee and the board of education does not justify withholding notice. Rather, the Azzaro court recognized that a board could opt to assign

² Unpublished Appellate Division and administrative decisions are not precedential. They are offered in this Initial Decision because they provide relevant guidance.

³ In Azzaro, the parties seeking indemnification did not request indemnification until after the underlying litigation of an Order to Show Cause that was issued by the State Board of Education was concluded. That matter spanned twelve years.

outside counsel or “come to an agreement with counsel of [petitioner’s] choosing . . . and the costs thereof.” Id. at 442 (quoting Edison, 147 N.J. Super. at 15). See also A.B. v. Montville Board of Educ., 2012 N.J. Super. Unpub. LEXIS 1086 (App. Div. 2012)(in which a school board told its employee that it would ask its insurance carrier about representation but also recommended that the employee seek representation through the NJEA; the NJEA retained counsel through its insurance carrier and paid the costs and fees of the employee’s defense; the board was later required to reimburse NJEA’s legal fees and costs).

Petitioner argues that it could not have notified the Board sooner because the investigations proceeded rapidly and it would have been impossible for the Board to receive and consider its requests before the investigations concluded. Petitioner is correct that the regulations governing IAIU investigations demand that they start and end quickly. The investigation of a report of abuse must start “no later than the end of the work day or within 24 hours of the State Central Registry representative determining the time frame” and findings must be made within sixty days of the abuse report being received at the Registry. N.J.A.C. 3A:10-2.2(a), N.J.A.C. 3A:10-7.3(b). However, petitioner asserts, without citing authority for its position, that the subject of an IAIU investigation cannot unilaterally extend the investigatory timeline to secure counsel and if the agency is unable to “obtain a statement/information from the subject” within the required timeframe, it “may simply conclude the investigation without that person’s input.” Pet’r’s Br. at 8.⁴

Notwithstanding the rapid timeline for IAIU investigations, as Azzaro explained, petitioner was not obligated to predict the Board’s capacity and willingness to address its requests for representation. Instead, petitioner’s obligation was merely to notify the Board that it sought representation or indemnification. If the Board were unable to respond to

⁴ Rather, the regulations contemplate that the investigatory body may extend its investigation under certain circumstances. See N.J.A.C. 3A:10-7.3(b)(while findings shall be made within sixty days, this deadline may be extended “for good cause approved by the office manager or designee. The office manager or designee may grant extensions in increments of 30 days, if the child protective investigator is continuing efforts to confirm credible information”).

the request in a timely manner, it would have at least been on notice that petitioner intended to request indemnification when the investigation ended.

Here, the IAIU investigations concerning A.D., D.C., I.P. and L.D. ended on December 21, 2021, May 11, 2022, December 20, 2018, and July 12, 2022, respectively. Petitioner first notified the Board of its intent to seek indemnification on September 16, 2022. This was almost one year after A.D.'s investigation closed; four months after D.C.'s investigation closed; nearly two years after I.P.'s investigation closed; and two months after L.D.'s investigation closed.

The IAIU investigations concerning D.A., T.Y. and U.A. ended on December 9, 2022, March 29, 2023, and February 22, 2023. Petitioner first notified the Board of its intent to seek indemnification on April 26, 2023. This was almost five months after D.A.'s investigation closed; one month after T.Y.'s investigation closed; and two months after U.A.'s investigation closed.

The shortest IAIU investigations lasted approximately one and one-half months (D.C., from April 1, 2022, through May 11, 2022), and nearly two months (T.Y., from February 6, 2023, to March 29, 2023). Others lasted approximately three months (A.D., U.A.)

Given the speed with which IAIU investigations proceed, it would have been reasonable for petitioner⁵ to notify respondent immediately. Furthermore, petitioner does not offer an explanation for why it waited until after the investigations closed, whether for one month, several months or a year, to notify the Board of its intention. For these reasons, I **CONCLUDE** that petitioner has not demonstrated that its delays were reasonable and, therefore, it is not entitled to the relief it seeks from respondent.

⁵ Or the employees.

ORDER

I **ORDER** that respondent's motion for summary decision is **GRANTED** and petitioner's motion for summary decision 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 Acting 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**. Exceptions may be filed by email to ControversiesDisputesFilings@doe.nj.gov or by mail to Office of Controversies and Disputes, 100 Riverview Plaza, 4th Floor, PO Box 500, Trenton, New Jersey 08625-0500. A copy of any exceptions must be sent to the judge and to the other parties.

April 10, 2025

DATE


JUDITH LIEBERMAN, ALJ

Date Received at Agency:

Date Mailed to Parties:

JL/mg

APPENDIX

OAL

OAL-1 Email to Department of Education, Office of Controversies and Disputes,
April 26, 2023

For petitioner:

Brief in support of motion for summary decision, February 3, 2025

P-A Verified Petition for Indemnification, September 16, 2022

P-B Verified Petition for Indemnification, April 26, 2023

P-C Order of Consolidation

P-D Order Denying Motion to Dismiss

P-E Table of IAIU Unfounded Findings and Legal Services Timelines

For respondent:

Brief in support of cross-motion for summary decision, February 3, 2025

Certification of James Rolle, Jr., February 3, 2025