

New Jersey Commissioner of Education
Final Decision

Mellk Cridge, LLC,

Petitioner,

v.

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

Respondent.

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

Petitioner served as legal counsel to an employee of the Board who was 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 claim failed because it had not notified the Board of the indemnification request within a reasonable period of time after learning of the charges against the employee. Accordingly, the ALJ granted the Board's motion for summary decision.¹

¹ In a prior Order denying the Board's motion to dismiss, the ALJ concluded that *N.J.S.A. 18A:16-6* applies to IAIU investigations, and that petitioner has standing to seek indemnification. Although the Board re-raised these arguments in its reply to petitioner's exceptions, the Board did not file its own exceptions to

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.

In response, the Board argues that the ALJ properly found that petitioner did not provide the Board timely notice of the indemnification request.

Upon review, the Commissioner concurs with the ALJ that petitioner failed to give the Board reasonable notice of its indemnification request, 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 three months after the conclusion of the IAIU investigation 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 the allegations were referred to the IAIU on February 14, 2022, and the IAIU issued a determination that they were unfounded on March 24, 2022.² Petitioner's assertion that the Board

these conclusions. Because the decision herein was made on other grounds, the Commissioner does not reach these issues.

² The Initial Decision contains a typographical error identifying the date of the IAIU's determination as March 24, 2024. The remainder of the record reflects that the determination was made in 2022.

would have been unable to review an indemnification request and assign counsel to the employee 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 investigation was 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 request – 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. The ALJ noted that petitioner was in contact with the Board's attorney on the first day it represented the employee, and several times shortly thereafter. The Commissioner agrees with the ALJ that petitioner could have made an indemnification request at any point during those communications. Furthermore, even if the Commissioner were to reject the "immediate" notice that the ALJ found

reasonable here, the fact remains that the investigation continued for more than five weeks after the allegation was referred to the IAIU. The Commissioner concludes that petitioner's failure to make its indemnification request during that period was unreasonable, and it was further compounded by petitioner's failure to request indemnification for nearly three additional months after the investigation was completed.

Finally, the Commissioner rejects petitioner's argument that its claim did not accrue until the IAIU issued its finding 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.³


COMMISSIONER OF EDUCATION

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

³ 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 09083-22

AGENCY DKT. NO. 251-9/22

MELLK CRIDGE, LLC,

Petitioner,

v.

BOROUGH OF SAYREVILLE

BOARD OF EDUCATION,

MIDDLESEX COUNTY,

Respondent.

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

Aron G. Mandel, Esq., for respondent (The Busch Law Group, LLC, attorneys)

Record Closed: February 17, 2025

Decided: April 10, 2025

BEFORE **JUDITH LIEBERMAN**, ALJ:

STATEMENT OF THE CASE

Petitioner law firm Mellk Cridge LLC, represented an employee of respondent Board of Education of the Borough of Sayreville (Board) who was the subject of an investigation by the New Jersey Department of Children and Families, Institutional Abuse

Investigation Unit (IAIU). Petitioner seeks indemnification of its legal fees and costs from respondent, pursuant to N.J.S.A. 18A:16-6. The parties filed cross-motions for summary decision that address prerequisites to eligibility for indemnification: whether petitioner provided respondent reasonable notice of its intent to seek indemnification and whether the employee's actions that were the subject of the investigation fell within the scope of her employment duties.

PROCEDURAL HISTORY

Petitioner filed its petition with the Commissioner of the Department of Education (Commissioner) on September 16, 2022. The Department of Education transmitted the matter to the Office of Administrative Law, where on October 11, 2022, it was filed as a contested case. N.J.S.A. 52:14B-1 to -15; N.J.S.A. 52:14F-1 to -13. Respondent filed a motion to dismiss that was denied on May 2, 2023.¹ Respondent requested interlocutory review of the decision. On June 1, 2023, the Acting Commissioner denied the request for interlocutory review.

Orders of Inactivity were issued on June 7, 2023, December 19, 2023, and August 26, 2024, pending the disposition of Azzaro v. Bd. of Educ. 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 Appellate Division's decision in Azzaro. Petitioner and respondent filed their cross-motions for summary decision on February 3, 2025; respondent filed its brief in opposition to petitioner's motion and in further support of its motion on February 17, 2025. Petitioner did not file an additional brief. The record for the motion closed on February 17, 2025.

¹ Respondent argued that petitioner did not have standing to seek indemnification under N.J.S.A. 18A:16-6 and that the statute does not authorize indemnification of fees and costs incurred during the defense of an IAIU investigation. The motion was denied with respect to both issues.

FACTUAL DISCUSSION

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

Petitioner Mellk Cridge LLC is a law firm that represented M.C., a former Board employee who was accused of improper conduct toward students while she was still employed. On or about February 14, 2022, the accusations were referred to the IAIU, which conducted an investigation. Cert. of Superintendent Richard Labbe (Labbe Cert.) at ¶ 2, Exh. A. Petitioner was assigned to represent M.C. by her union, the New Jersey Education Association (NJEA). On March 24, 2024, the IAIU advised that it had determined the allegations were unfounded. Ibid.

Petitioner represented M.C. from February 15, 2022, through March 7, 2022. Id. at ¶ 7, Exh. C at 2. In conjunction with its representation of the employee, petitioner spoke with Board counsel on February 15, 2022, February 16, 2022, February 22, 2022, and February 23, 2022. Ibid. The employee was interviewed by an IAIU investigator in March 2022. Ibid. Petitioner first requested indemnification of its fees and costs on June 12, 2022. Ibid.

Board counsel was not aware of petitioner's intention to seek indemnification until it received petitioner's June 16, 2022, request. Cert. of Ari Schnieder, Esq. (Schneider Cert.) at ¶ 2. Had petitioner notified respondent of its intention at the start of the representation, it could have considered whether to appoint counsel during its February or March meetings or taken other action to manage its costs, including notifying its insurance carrier. Labbe Cert. at ¶¶ 3, 8, 10, Exh. B. The Board would have also been able to provide timely notice to its insurance carrier, which is required to ensure coverage. Id. at ¶ 10.

M.C. was not subject to criminal charges or any other legal proceeding or administrative action in association with the allegations. Id. at ¶¶ 4–5. The Board terminated her employment effective April 1, 2022, "in connection with the incidents that led to the accusations" against her. Id. at ¶ 3, Exh. B.

Parties' Arguments

Petitioner asserts that it is entitled to indemnification of its fees and costs because the “allegations which precipitated . . . [the IAIU] investigation arose out of M.C.’s performance of her duties as an employee of Sayreville” and because it provided the Board with reasonable notice of its intent to seek indemnification. Pet’r’s Br. at 1. It could not have notified the Board before June 12, 2022, because IAIU investigations are required to proceed significantly more quickly than other proceedings for which indemnification may be sought, such as the order to show cause that was the subject of Azzaro. 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 argues that petitioner did not provide reasonable notice of its intent to request indemnification because the request was made three months after the investigation ended. The request could have been made while the investigation was pending. Had this occurred, the Board could have taken steps to manage the costs of the investigation. It also contends that petitioner is ineligible for indemnification because the employee’s conduct was not within the scope of her employment.

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. The facts relied upon by both parties concerning the initiation of the IAIU investigation, petitioner’s representation of M.C., the IAIU’s findings, and

petitioner's communication with respondent concerning indemnification are not in dispute. Summary decision is, therefore, 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. Bd. 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 (Dec. 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

The parties propose disparate conclusions concerning whether the actions that were the subject of the IAIU investigation arose out of the scope of M.C.'s duties. M.C. was alleged to have engaged in improper conduct with students. The IAIU concluded that the allegations against M.C. 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).

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

In support of its argument that M.C.'s actions were not within the scope of her duties, respondent asserts only that the "investigated conduct which gives rise to this claim for indemnification was not within M.C.'s scope of employment[.]" Resp't's Br. at 7. It presumably relies upon its termination of M.C. as support for this assertion; however, it did not offer evidence explaining the rationale for the termination. Moreover, it did not offer evidence that disputes the "unfounded" finding or indicates that M.C. was not performing the job she was hired for when the alleged acts occurred.

Here, there is no evidence in the record concerning M.C.'s actions other than the determination that the allegations against her were "unfounded." As she was exonerated and there is no evidence in the record indicating that she engaged in acts outside the scope of her duties, the undisputed evidence supports the conclusion that she was acting within the scope of her duties at the relevant time. Therefore, petitioner satisfies the statutory prerequisite for indemnification.

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 not to 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

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.

withholding notice. Rather, the Azzaro court recognized that a board could opt to assign 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 Bd. 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 investigation proceeded rapidly, and it would have been impossible for the Board to receive and consider its request in time. 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 a request 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 the request in a timely manner, it would have at least been on notice that it would be asked to pay petitioner’s fees and costs at the end of the investigation.

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”).

Here, given the speed with which IAIU investigations proceed, it would have been reasonable for petitioner⁵ to notify respondent immediately. Indeed, petitioner spoke with Board counsel during the first day it represented M.C. and at least two times shortly thereafter. Assuming that the emergent nature of the investigations somehow made it difficult to provide notice while the investigation was pending, there is no explanation for why petitioner waited until three months after the investigation closed. For these reasons, I **CONCLUDE** that petitioner has not demonstrated that its delay was reasonable and, therefore, it is not entitled to the relief it seeks from respondent.

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.

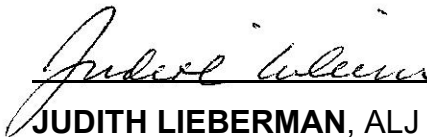
This recommended decision may be adopted, modified, or rejected by the **COMMISSIONER OF THE DEPARTMENT OF EDUCATION**, who by law is authorized to make a final decision in this matter. If the Acting Commissioner of the Department of Education does not adopt, modify, or reject this decision within forty-five 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.

⁵ Or M.C.

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

For petitioner:

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

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

P-B Order Denying Motion to Dismiss May 2, 2023

For respondent:

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

Certification of Richard Labbe, February 2, 2025

R-A IAIU findings letters, March 22, 2024

R-B Notice of Termination, March 2, 2022

R-C Letter, Mellk Cridge to Ari Schnieder, Esq., June 16, 2022

Certification of Ari Schnieder, Esq., February 3, 2025

Brief in opposition to petitioner's motion and in support of respondent's cross-motion, February 17, 2025