

405-26R

OAL Dkt. Nos. EDU 00463-26, 00464-26, 00465-26, 00466-26 (consolidated)

Agency Dkt. Nos. 427-12/25, 428-12/25, 429-12/25, 430-12/25

New Jersey Commissioner of Education

Decision

Malcolm X. Outlaw,

Petitioner,

v.

Board of Education of the Township of
Willingboro, Burlington County,

Respondent.

The record of this matter and the Initial Decision of the Office of Administrative Law (OAL) have been reviewed and considered. The parties did not file exceptions.

This matter arises out of the Willingboro Board of Education's (Board) decision to indemnify Board member April Henley and Business Administrator Steven Lewis for the costs of defending against complaints filed against them with the School Ethics Commission (SEC). The Administrative Law Judge (ALJ) granted the Board's motion for summary decision, finding that the Board's resolution approving the payment of legal fees and costs was an action arising out and in the course of performing their duties as board members.

In support of her conclusion, the ALJ cited to *Errington v. Mansfield Twp. Bd. of Educ.*, 100 N.J. Super. 130, 137 (App. Div. Mar. 27, 1968), in which the Appellate Division held that board members adopting an indemnification resolution were performing an act which arose out of and in the course of performing their duties as board members. However, the ALJ's conclusion conflates two different issues that were before the Appellate Division in *Errington*, which

involved a complicated series of facts. In summary, board member Harsha published a letter about Errington; Errington filed a libel suit against her (Suit #1). The board then passed a resolution indemnifying Harsha for her legal fees and costs incurred in Suit #1. The passage of the resolution resulted in Errington filing a new libel suit against the board members who had voted in favor of it (Suit #2). A dispute arose regarding whether the board members were entitled to indemnification for their costs in Suit #2. In its decision, the Appellate Division addressed two questions: 1) whether the resolution indemnifying Harsha for the costs of Suit #1 was valid, and 2) whether the board members were entitled to indemnification for the costs of Suit #2. The Appellate Division found that the board members were entitled to indemnification, because passing a resolution – the action that led to Suit #2 – is an action that arose out of and in the course of performing the board members’ duties. However, the Appellate Division also indicated that the resolution indemnifying Harsha, who had taken a “personal and unauthorized act” by publishing the letter, was “invalid for want of authority to spend the public funds for the designated purpose. . . The expenditure may be enjoined and the resolution may be judicially set aside . . .”. *Id.* at 137. In other words, because Harsha’s actions in publishing the letter that led to Suit #1 did not arise out of and in the course of performing her duties, the board was incorrect in indemnifying her for the costs of Suit #1, and its resolution was invalid.

Here, the Board is not seeking indemnification for a legal action filed against its members for passing the resolutions indemnifying Henley and Lewis. Instead, petitioner is challenging the validity of the Board’s resolutions themselves. The question presented, therefore, is not whether the Board’s resolutions arose out of and in the course of performing their duties, but rather

whether the Board acted in an arbitrary, capricious, or unreasonable manner in determining that Henley and Lewis were entitled to indemnification under *N.J.S.A. 18A:16-6*.

Upon review, the Commissioner concludes that there are disputed issues of material fact that preclude summary decision at this stage of the proceedings. The Board argued in its motion for summary decision that the only issue in this matter is a purely legal one: whether the Board possessed lawful authority to approve indemnification resolutions under *N.J.S.A. 18A:16-6* and Board Policy 8750. The Commissioner disagrees. The Board clearly has authority to pass indemnification resolutions in a general sense. However, whether the Board acted in an arbitrary, capricious, or unreasonable manner in passing the specific indemnification resolutions at issue in this matter depends partly on facts related to whether Henley's and Lewis's actions arose out of and in the course of performing their duties. Those facts are disputed by petitioner, and they require further development of the record to resolve.

The Commissioner notes that this remand is not an opportunity for petitioner to relitigate the ethics complaints filed against Henley and Lewis; the SEC has exclusive jurisdiction over ethics complaints and has already issued its decisions finding no probable cause that either Henley or Lewis violated the School Ethics Act. The issue on remand is not whether Henley's and Lewis's actions were appropriate under the school ethics laws or any other law or policy, but whether those actions arose out of and in the course of performing their duties as a board member and school business administrator. The Commissioner further notes that the Board's decision that Henley's and Lewis's actions did arise out of and in the course of performing their duties, and that indemnification was appropriate, is entitled to deference and should not be overturned

unless it was arbitrary, capricious, or unreasonable.¹ Moreover, in determining whether Henley's and Lewis's actions arose out of and in the course of performing their duties, the relevant inquiry is whether the actions were taken "in furtherance of their prescribed duties. Those duties are prescribed by statute, by the rules and regulations of the board itself and of those who supervise its activities, and by resolutions authorizing specific action to be taken." *Errington, supra*, at 138. A board member's (or business administrator's) actions can be invalid – as was the resolution the board members passed indemnifying Harsha in *Errington* – but still be entitled to indemnification.²

Accordingly, this matter is remanded to the Office of Administrative Law for further proceedings consistent with this decision.

IT IS SO ORDERED.


COMMISSIONER OF EDUCATION

Date of Decision: October 13, 2026
Date of Mailing: October 13, 2026

¹ Petitioner argues in his opposition to the Board's motion for summary decision that neither Henley nor Lewis has carried the burden of proving that their actions fall within their official duty performance. Initially, neither Henley nor Lewis is a party to this matter. However, even if this argument was intended to address the Board's burden, the Board does not have the burden of demonstrating that Henley's and Lewis's actions fell within their official duties. Petitioner has the burden of demonstrating that the Board's decision was arbitrary, capricious, or unreasonable.

² Indeed, even conduct that has been found to violate the School Ethics Act can be indemnified when that conduct arose out of and in the course of performing the board member's duties. *See, e.g., Skowronski v. Bd. of Ed. Of the Twp. of E. Greenwich*, Commissioner Decision No. 127-22 (June 16, 2022).



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NOS. EDU 00463-26;
EDU 00464-26; EDU 00465-26
EDU 00466-26
AGENCY DKT. NOS. 430-12/25;
429-12/25; 428-12/25;

(CONSOLIDATED)

MALCOLM X. OUTLAW,

Petitioner,

v.

**TOWNSHIP OF WILLINGBORO BOARD
OF EDUCATION, BURLINGTON COUNTY,**

Respondents.

Malcolm X. Outlaw, petitioner, pro se

Jeffrey R. Merlino, Esq., appearing for respondent

Record Closed: July 27, 2026

Decided: August 10, 2026

BEFORE **KIM C. BELIN**, ALJ:

STATEMENT OF THE CASE

Petitioner, Malcolm X. Outlaw, (petitioner or Outlaw) challenges the Willingboro Township Board of Education's decision, (respondent or Board) to indemnify the school business administrator (SBA) and a school board member for legal fees and costs associated with two school ethics complaints. Are there genuine issues of material fact sufficient to warrant an evidentiary hearing? No, case law states that a board voting to use its funds to indemnify members is an act arising out of and in the course of the performance of its duties as a board.

PROCEDURAL HISTORY

Petitioner filed four petitions dated December 9, 2025, seeking the Commissioner of Education (Commissioner) to find that respondent's decision to indemnify the SBA and a school board member was contrary to New Jersey law and Board policy and direct that any funds expended be recouped. Respondent filed its answers on December 30, 2025.

The Department of Education transmitted the appeals to the Office of Administrative Law (OAL), where they were filed on January 6, 2026, as contested cases under N.J.S.A. 52:14B-1 to -15; N.J.S.A. 52:14F-1 to -13. The four petitions were assigned the following OAL docket numbers: 00463-26, 00464-26, 00465-26, and 00466-26.

With respondent's consent, petitioner requested that the matters be consolidated on April 6, 2026. Accordingly, by Order dated April 15, 2026, the matters were consolidated with an OAL docket number of EDU 00463-26.

On May 12, 2026, respondent filed a motion for summary decision. Petitioner filed his opposition on May 22, 2026.

FACTUAL DISCUSSION AND FINDINGS

Based upon the documents filed in this matter, I **FIND** the following as **FACTS**:

On October 13, 2025, Petitioner filed ethics charges against the SBA, Dr. Steven Lewis and school board member April Henley (Henley). (Exhs. B and C, Petitioner's

Opposition.) These charges were deemed deficient, and petitioner filed amended ethics charges on October 31, 2025, and October 29, 2025, respectively. (Ibid.)

In decisions dated April 28, 2026, the School Ethics Commission (SEC) found no probable cause for both cases on the basis that there were insufficient facts and circumstances contained in the complaints to lead a reasonable person to believe that the School Ethics Act had been violated. (Exhs. C and E, Petitioner's Opposition.)

By Board resolutions, dated November 24, 2025, and December 5, 2025, the Board approved indemnification of legal costs for Dr. Lewis and Henley. (Exh. 1 of EDU 00463, and Exh. A of EDU 00464, 00465, 00466.)

On December 9, 2025, Outlaw filed four petitions with the Commissioner against the respondent challenging its decision to indemnify the SBA and Henley. Specifically:

- EDU 00463 challenged the Board's decision to indemnify the SBA against allegations that he violated the School Ethics Act by hiring a now former board member as his real estate agent in the purchase of a home.
- EDU 00464 challenged the Board's decision to indemnify Henley for legal costs associated with allegations that she used district resources for a private event for the Willingboro Education Fund (WEF).
- EDU 00465 challenged the Board's decision to indemnify the SBA for legal costs associated with allegations that he improperly authorized the use of district resources for the WEF without proper approval from the Superintendent and the SBA used his official position to secure unwarranted privileges and advantages for the WEF.
- EDU 00466 challenged the Board's decision to indemnify the SBA for legal costs associated with allegations that he used district resources for his personal businesses.

By order, dated April 15, 2026, the four matters were consolidated and assigned OAL Docket Number EDU 00463.

Board policy 8750 allows for employee indemnification for conduct arising out of and in the course of the performance of the employee's duties. (Exh. A, Respondent's MSD.)

In an email dated October 4, 2024, the SBA requested that the technology manager create an email for foundation@wboe.net. (Exh. M, Petitioner's Opposition.) A copy of the request was sent to Henley, who responded with "Yay! (smile emoji) thanks." (Ibid.)

ARGUMENTS ON THE MOTION

Respondent asserts that petitioner's claims fail as a matter of law because: 1) petitioner lacks standing to contest the Board's discretionary indemnification decisions; 2) respondent acted within its statutory authority under N.J.S.A. 18A:16-6; 3) respondent's actions were not arbitrary, capricious or unreasonable; and 4) there are no genuine issues of material fact that require an evidentiary hearing.

Conversely, petitioner asserts that as the current superintendent, he has standing to bring the claims; there are genuine issues of material fact regarding whether the SBA was acting in accordance with his duties when he used district resources to print materials for an outside nonprofit organization and for his personal business; and the Board's decision to indemnify its own members and officials and put the superintendent on administrative leave is a conflict of interest and presents an appearance of impropriety that runs afoul of the School Ethics Act.

LEGAL ANALYSIS AND CONCLUSION

A motion for summary decision may be granted if the papers and discovery presented, as well as any affidavits which may have been filed with the application, show that there is no genuine issue of material fact, and the moving party is entitled to prevail as a matter of law. N.J.A.C. 1:1-12.5(b). If the motion is sufficiently supported, the non-moving party must demonstrate by affidavit that there is a genuine issue of fact which can only be determined in an evidentiary proceeding, in order to prevail in such an application.

Ibid. These provisions mirror the summary judgment language of R. 4:46-2(c) of the New Jersey Court Rules.

The motion judge must “consider whether competent evidential materials presented, when viewed in the light most favorable to the non-moving party . . . are sufficient to permit a rational fact finder to resolve the alleged disputed issue in favor of the non-moving party.” Brill v. Guardian Life Insurance Company of American, 142 N.J. 520, 523 (1995). And even if the non-moving party comes forward with some evidence, this forum must grant summary decision if the evidence is “so one-sided that [the moving party] must prevail as a matter of law.” Id. at 536.

The threshold issue is standing. Respondent asserts that Outlaw does not have sufficient stake in the outcome. New Jersey’s Administrative Procedures Act permits any “interested persons” to initiate challenges before the Commissioner. N.J.A.C. 6A:3-1.2 defines an interested person as “a person(s) who will be substantially, specifically, and directly affected by the outcome of a controversy before the Commissioner.” However, there must be more than just a speculative impact on the complainant:

Consequently, petitioners must show that they will “be affected by the outcome in a direct and meaningful way” before they may proceed in a contested case. U.K. & G.K. ex rel D.K. v. Clifton Bd. of Educ., 93 N.J.A.R.2d (EDU) 71; Kenwood v. Montclair Bd. of Educ., EDU 8858-81, Initial Decision, (Apr. 23, 1982), adopted, Comm'r (June 14, 1982)). Thus, to have standing, a complaining party must demonstrate “some measurable amount of detrimental impact on the complaining party’s personal rights.” S.J. v. Mountain Lakes Bd. of Educ., EDU 7081-03, Initial Decision, (Oct. 7, 2003) (citing, Salorio v. Glaser, 82 N.J. 482, 491 (1998)).

A deficiency in standing is fatal to a petition such as the one at issue here. “The dismissal of cases brought by litigants who will not be effected by the outcome in a direct and meaningful way is required by this regulation.” See S.J. v. Mountain Lakes Bd. of Educ., EDU 7081-03, Initial Decision, (Oct. 7, 2003) (citing S.R. and E.D.R. o/b/o E.D.R., Jr. v. Montague Bd. of Educ., EDU 5300-03, 201 AGEN LEXIS 583 (Oct. 3, 2001)).

See Cantatore v. Carlstadt-East Rutherford Reg'l High Sch. Dist. Bd. of Educ., 2023 N.J. AGEN LEXIS 221, *9, Initial Decision (Apr. 26, 2023), adopted, Comm'r (May 25, 2023), <https://www.nj.gov/education/legal/commissioner/2023/153-23.pdf>.

Additionally, Green, et al. v. Bd. Of Educ. of the Twp. of Ocean, Monmouth Cty., 2016 N.J. AGEN LEXIS 774, *12, Initial Decision (Sept. 8, 2016), provides that standing is “a threshold justiciability determination whether the litigant is entitled to initiate and maintain an action before a court or other tribunal.” In re Six-Month Extension of N.J.A.C. 5:91-1 et seq., 372 N.J. Super. 61, 85 (App. Div. 2004), certif. denied, 182 N.J. 630 (2005). In New Jersey, there exists a rather liberal approach to questions of standing. Crescent Park Tenants Ass'n v. Realty Equity Corp. of N.Y., 58 N.J. 98, 101, 107-11 (1971). Standing is nonetheless limited to “situations where the litigant's concern with the subject matter evidence[s] a sufficient stake and real adverseness.” *Id.* at 107. These requirements are designed to prevent litigation by those who are “merely interlopers or strangers to the dispute.” *Ibid.*

Outlaw contends that he has standing as the superintendent of schools charged with oversight of district resources and as a taxpayer. As the superintendent, Outlaw was “the chief executive and administrative officer of the board . . . employing him and [had] general supervision over all aspects, including the fiscal operations and instructional programs, of the schools of the district...” N.J.S.A. 18A:17-20b. Accordingly, use of district resources was within his scope of responsibilities. In addition, taxpayers of a school district have been found to have standing if they have a “slight private interest, added to and harmonizing with the general public interest.” Medford Investor Associates, LLC v. Bd. of Ed. of the Township of Medford, 2013 N.J. AGEN LEXIS 271 at *5. (September 16, 2013) quoting Hudson Bergen Cnty. Retail Liquor Stores Assn. v. Bd. of Comm'rs, City of Hoboken, 135 N.J.L. 502, 510 (E. & A. 1947). Outlaw's address as listed on the original petitions indicate that he resides in Newark, New Jersey and thus, absent proof of residence in Willingboro, he is not a taxpayer of the Willingboro school district. However, notwithstanding this uncertainty, the Appellate Division granted standing to two tenured part-time supplemental teachers by virtue of their professional status and involvement who challenged a newly adopted board policy. Ridgewood Educ. Assn v. Ridgewood Bd.,

284 N.J. Super 427 (N.J. Super. 1995). Accordingly, I **CONCLUDE** that petitioner's professional status sufficiently establishes his standing as required by N.J.A.C. 6A:3-1.2.

N.J.S.A. 18A:16-6, the statute at issue, provides in relevant part:

Whenever any civil or administrative action or other legal proceeding has been or shall be brought against any person holding any office, position or employment under the jurisdiction of any board of education, including any student teacher or person assigned to other professional pre-teaching field experience, for any act or omission arising out of and in the course of the performance of the duties of such office, position, employment or student teaching or other assignment to professional field experience, the board shall defray all costs of defending such action, including reasonable counsel fees and expenses, together with costs of appeal, if any, and shall save harmless and protect such person from any financial loss resulting therefrom; . . . (Emphasis added.)

Outlaw also cites to N.J.S.A. 18A:12-20 which provides indemnification specifically for school board members, who must defend against any civil, administrative or other legal proceeding "for any act or omission arising out of and in the course of the performance of his duties as a member of a board of education." Outlaw contends that neither Dr. Lewis nor Ms. Henley qualify for indemnification under either statute because their actions did not arise out of or were in the course of the performance of their duties as the SBA or a school board member respectively. The actions of these two individuals, however, are not at issue in the present controversy. Those issues were addressed by the School Ethics Commission who issued no probable cause decisions. Instead, the issue before this tribunal is whether the Board's decision to indemnify these two individuals complied with these statutes.

This nuanced issue was addressed in Errington v. Mansfield Twp. Bd. of Ed., 100 N.J. Super. 130 (App. Div. 1968)¹. The president of the school board, without consulting with a majority of the board, published a letter in a local newspaper that the plaintiff alleged was defamatory. The plaintiff filed a libel suit against the president, and almost a year later, the board adopted a resolution supporting the president stating that she had

¹ This case involved an earlier version of N.J.S.A. 18A:12-20 and 18A:16-6.

acted on the board's behalf. The board authorized payment for her legal defense. The plaintiff then filed a libel suit against those board members, and the board adopted a resolution authorizing payment for their defense of the libel suit.

The Law Division granted plaintiff's motion for summary judgment concluding that the defamatory letter did not arise out of or was in the course of the performance of the president's duties and the Appellate Division affirmed. 81 N.J. Super. 414 (1963). However, the New Jersey Supreme Court reversed and remanded for a full record of the libel actions. 42 N.J. 320 (1964). On remand, the Appellate Division maintained its conclusion that the resolution approving the defense of the board president was unauthorized because she had not written it in the course of her duties as the board president. However, with regard to the board's decision to indemnify itself, the Appellate Division ruled that although the resolution was faulty and invalid, the board had acted in the performance of their duties and therefore the board was entitled to be defended in the second libel action. Specifically, the Appellate Division stated:

When the board members, in a proper meeting duly assembled, vote upon a resolution relating to the expenditure of the board's funds, their act in doing so 'arises out of and in the course of the performance of their duties as members of the board.' The resolution may be invalid for want of authority to spend the public funds for the designated purpose, as here. The expenditure may be enjoined and the resolution may be judicially set aside, as in the instant case. The board members may have been legally mistaken in their belief that the resolution could be validly adopted. But the conclusion still persists that the board members, in adopting the resolution to engage counsel to defend a board member sued for libel and thereby authorizing the expenditure of public funds, were performing an act which arose out of and during the course of the performance of their duties as board members.

[100 N.J. Super. at *137.]

To further his position, petitioner relies upon Bower v. Bd. of Educ. 149 N.J. 416 (1997) which cites to the Errington decision; however, in Bower, the state Supreme Court considered the criminal *and* civil indemnification statutes N.J.S.A. 18A:16-6, and 18A:16-

6.1, to determine whether the board must indemnify a teacher for legal expenses incurred after criminal charges that he sexually assaulted students in school were dismissed. The criminal statute is not in issue here.

Applying the Errington analysis to the current controversy, I am constrained to **CONCLUDE** that regardless of whether the SBA and Henley's actions were appropriate under the law, the respondent's action in adopting resolutions to indemnify the SBA and Henley were acts performed in the course of the performance of their duties as board members. Finally, the issue of whether there is a conflict of interest for the Board to indemnify its members and officials and put the superintendent on administrative leave was not included in the original four petitions and thus, will not be addressed herein.

Based upon the applicable law referenced above, I **CONCLUDE** summary decision is warranted in this matter. The record does not contain any genuine issues of material facts sufficient to warrant an evidentiary hearing.

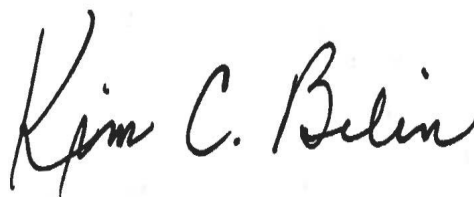
ORDER

For the foregoing reasons, I hereby **ORDER** that respondent, Willingboro Township Board of Education's motion for summary decision is hereby **GRANTED** and the petitioner's petition is **DISMISSED**.

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**. 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.



August 10, 2026

DATE

KIM C. BELIN, ALJ

Date Received at Agency:

August 10, 2026

Date Mailed to Parties:

August 10, 2026

KCB/gd