

357-24  
OAL Dkt. No. EDU 13639-23  
Agency Dkt. No. 276-10/23

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

Robert Lawless,

Petitioner,

v.

Board of Education of the City of Bridgeton,  
Cumberland County,

Respondent.

The record of this matter, the Initial Decision of the Office of Administrative Law (OAL), and the exceptions filed by petitioner Robert Lawless pursuant to *N.J.A.C. 1:1-18.4*, have been reviewed and considered. Respondent, Board of Education of the City of Bridgeton (Board), did not file a reply.

Pursuant to *N.J.S.A. 18A:16-6*, petitioner seeks reimbursement of counsel fees and costs from the Board associated with the successful defense of an Order to Show Cause (OTSC) issued against him by the New Jersey State Board of Examiners (SBE). In September 2017, after the Board served him with tenure charges, petitioner agreed to resign from employment with the Board. The Board accepted petitioner's resignation and did not certify the tenure charges it had contemplated bringing against him. In January 2018, the Board notified SBE of petitioner's resignation. In September 2018, SBE issued an OTSC against petitioner seeking to revoke his teaching certificates due to allegations of unbecoming conduct. Petitioner retained counsel to

defend against the OTSC. Ultimately, SBE vacated the OTSC on June 29, 2023, and took no action against petitioner's certificates. Petitioner was notified of same via letter dated July 5, 2023.

On October 13, 2023, petitioner initiated the instant matter via the filing of a petition of appeal with the Office of Controversies and Disputes. The Board filed a motion to dismiss the petition, which was appropriately treated as a motion for summary decision by the Administrative Law Judge (ALJ) at the OAL. *K.L. v. Bd. of Educ. of Borough of Kinnelon*, Commissioner Decision No. 315-08, at 4 (July 23, 2008). Petitioner filed a cross-motion for summary decision. Upon review, the ALJ concluded that the matter was ripe for summary decision.

The ALJ found as fact that the filing of the petition on October 13, 2023, was the first time that petitioner put the Board on notice that he was seeking indemnification for counsel fees and costs associated with the OTSC pursuant to *N.J.S.A. 18A:16-6*, and that said notice did not occur "until five years of legal bills had accumulated." Initial Decision, at 13. Applying the Appellate Division's recent holding in *Azzaro v. Board of Education of the City of Trenton*, 477 N.J. Super. 427 (App. Div. 2023), the ALJ concluded that petitioner's delay in notifying the Board was "not reasonable in that [he] should have put respondent on notice at the inception of the administrative charges brought against him by the SBE in September, 2018." Initial Decision, at 13. Thus, the ALJ granted the Board's motion for summary decision, denied petitioner's cross-motion for summary decision, and dismissed the petition.

In his exceptions, although he neither contests the ALJ's factual findings nor distinguishes *Azzaro*, petitioner takes issue with the ALJ's conclusion that waiting five years to put the Board on notice of his indemnification request was unreasonable. He asserts that the plain language of

*N.J.S.A.* 18A:16-6 does not require notice to be given to the Board at the outset of the administrative proceedings. He argues that other statutes, such as *N.J.S.A.* 59:10A-1 pertaining to the Attorney General's duty to defend State employees, expressly require persons seeking a defense to make a "request" for same. In other words, had the Legislature intended to include a notice provision within *N.J.S.A.* 18A:16-6, it would have done so via the statute's plain language. Finally, petitioner claims that the Board does not have a policy concerning when notice must be given regarding indemnification requests.

Upon review, the Commissioner adopts the Initial Decision as the final decision in this matter for the reasons stated therein. The Commissioner agrees with the ALJ that *Azzaro* is directly applicable to the present matter. In *Azzaro*, the Appellate Division expressly rejected the argument raised in petitioner's exceptions that because *N.J.S.A.* 18A:16-6 does not contain a notice requirement, petitioners were under no obligation to demand a defense and indemnification from the Board at the inception of the OTSC proceedings. *Azzaro*, 477 *N.J. Super.* at 434. The court reasoned that "although *N.J.S.A.* 18A:16-6 does not specifically address when a party must request defense costs and indemnification from a school board, the statute suggests a board's obligation arises when the action is instituted," stating in relevant part, "[w]henever any civil or administrative action . . . has been or shall be brought . . . the board shall defray all costs of defending such action . . . ." *Id.* at 437. Ultimately, the court held that petitioners had "an obligation to advise the Board they sought defense costs within a reasonable period of time after the OSC was filed" and that "[w]hat constitutes a reasonable time may be a fact-specific inquiry." *Id.* at 440.

In this case, the Commissioner concurs with the ALJ that waiting five years after the OTSC was issued to advise the Board of petitioner's request for indemnification was unreasonable under the circumstances. The SBE issued the OTSC against petitioner in September 2018 and vacated the OTSC on June 29, 2023. Still, petitioner failed to notify the Board of his indemnification request until the instant petition was filed in October 2023. Petitioner fails to provide any explanation as to why he declined to notify the Board at the inception of the OTSC proceedings or when he retained counsel, other than arguing that neither the controlling statute nor Board policy required him to do so. Given the court's holding in *Azzaro*, petitioner's exceptions are unavailing.

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.<sup>1</sup>

  
ACTING COMMISSIONER OF EDUCATION

Date of Decision: September 30, 2024  
Date of Mailing: September 30, 2024

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<sup>1</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**

**SUMMARY DECISION**

OAL DKT. NO. EDU 13639-23

AGENCY DKT. NO. 276-10/23

**ROBERT LAWLESS,**

Petitioner,

v.

**BOARD OF EDUCATION OF THE CITY OF  
BRIDGETON, CUMBERLAND COUNTY,**

Respondent.

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**Dean R. Wittman, Esq.,** for petitioner (Zeller & Wieliczko, LLP, attorneys)

**Albert K. Marmero, Esq.,** for respondent (Marmero Law LLC, attorneys)

Record Closed: July 8, 2024

Decided: August 16, 2024

BEFORE **CATHERINE A. TUOHY, ALJ:**

**STATEMENT OF THE CASE**

Petitioner, Robert Lawless, seeks reimbursement of counsel fees and costs against respondent, City of Bridgeton Board of Education (Board) associated with the successful defense of an Order to Show Cause (OTSC) issued to Lawless by the New Jersey State Board of Examiners (SBE) pursuant to N.J.S.A. 18A:16-6.

### **PROCEDURAL HISTORY**

On October 13, 2023, petitioner filed a Verified Petition dated September 27, 2023, seeking an order directing Respondent to pay petitioner's reasonable counsel fees in the amount of \$133,422.50 and costs in the amount of \$3,263.58 incurred in the successful defense of an OTSC issued by the SBE on September 21, 2018, in which it directed Lawless to show cause why his teaching certificates should not be suspended or revoked as a result of tenure charges filed against him by the respondent board.

By letter, dated July 5, 2023, the SBE advised that at its meeting of June 29, 2023, it voted to vacate the OTSC and that therefore, there was no pending action against petitioner and his certificates were valid and in good standing. On October 13, 2023, petitioner filed his petition seeking reimbursement for counsel fees and costs against respondent. On November 30, 2023, respondent filed a Notice of Motion to Dismiss in Lieu of an Answer to Petition and Brief in Support of Motion to Dismiss with attached Exhibits A, B and C.

The matter was transmitted from the Department of Education Office of Controversies and Disputes to the OAL as a contested matter, where it was filed on December 1, 2023.

On April 29, 2024, petitioner filed a Notice of Cross-Motion for Summary Decision, Certification of Counsel, Statement of Material Facts and Brief in support of Petitioner's Cross-Motion, with attached Exhibits A through M.

On May 24, 2024, respondent filed a Brief in Opposition to Petitioner's Cross-Motion and in further Reply to its Motion to Dismiss.

Oral argument was conducted on July 8, 2024, and the motion record closed at that time.

## **FACTUAL DISCUSSIONS AND FINDINGS**

### **Respondent's Arguments**

Petitioner's legal costs and expenses were incurred in defending an OTSC brought by the SBE and not the respondent. Petitioner no longer worked for respondent and indemnification can only be sought by employees of the Board. Petitioner had not been an employee of respondent for more than a year when the OTSC was filed by the SBE. On August 30, 2017, respondent served sworn tenure charges on petitioner for allegations of violations of various district policies including inappropriate conduct, inappropriate restraints, and improper reporting of restraints that were used. Although petitioner will argue that a subsequent investigation by the State found that the allegations were unfounded, that has no bearing on whether district policies were violated. The state has different standards and what might not be considered institutional abuse by the state standards, could still be a violation of respondent's policies which could result in disciplinary action. Just because the state did not find that institutional abuse occurred does not mean the conduct did not rise to a violation of district policy. Also, there can be no indemnification when a disciplinary proceeding has been brought against the employee by the board. The tenure charges were never heard and no certification or vote by the board occurred as petitioner resigned his position to work elsewhere. There was no formal determination of the merits of the charges and petitioner opted to resign. Petitioner had every right to challenge the tenure charges, but he decided to resign.

Respondent did not certify the tenure charges against petitioner, as he found employment elsewhere and there was an agreement reached between the parties that petitioner would resign, and respondent would waive the sixty-day notice provision to allow him to resign and take the new position. The Board never voted on the tenure charges and accepted petitioner's resignation at its September 29, 2017, meeting.

Pursuant to the notification provisions set forth in N.J.A.C. 6A:9B-4.3, respondent's superintendent did send a letter to the SBE dated January 24, 2018,

advising them that petitioner submitted his letter of resignation on September 29, 2017, effective September 30, 2017, while he was on administrative leave with pay, while the respondent conducted an investigation into his conduct which lead to the filing and serving of Sworn Tenure Charges against him. (Exhibit B, Respondent's motion to Dismiss.) Although the tenure charges against petitioner were outlined in the letter, they were not attached. The parties agreed that sometime later, the SBE requested a copy from the respondent, and a copy was provided to the SBE by respondent.

Respondent argues that its involvement ended at that point and that the SBE on its own initiative filed an OTSC a year later, on September 21, 2018, seeking to revoke petitioner's teaching certificates. Respondent was not a party to that action.

By letter, dated July 5, 2023, the SBE advised petitioner that at its meeting of June 29, 2023, it voted to vacate the OTSC and that therefore, there was no pending action against petitioner and his certificates were valid and in good standing. There never was never any adjudication of the allegations raised in the tenure charges.

Petitioner would argue that the charges brought by respondent were false and defamatory and he is therefore owed indemnification for having to defend the OTSC brought by the SBE.

Indemnification is only required for conduct falling within the employment duties of the school board employee and the allegations of inappropriate conduct do not fall within the employment duties of the petitioner.

Typically, what happens in these cases is the employee would request indemnification from the district; the district usually has insurance coverage, and the matter would be forwarded to the insurance carrier; the employee would select an attorney of their choosing; the attorney would submit a fee schedule to the insurance company, who would approve, deny or modify the fee schedule. Invoices would then be submitted to the district on a regular basis for approval; and then the insurer would have a maximum level they would contribute towards the indemnification. Once the maximum level was reached, the district would then kick in and pay for the rest of the



indemnification. None of that occurred in this case. Instead, the district is faced with a six-figure invoice in a matter it was not involved in and had no notice of and that arose from disciplinary charges which the district had brought in the past. The district had no opportunity to vet the attorney or approve the fee structure or run it through insurance.

Furthermore, the fees and costs sought were not paid out of pocket by petitioner and therefore he is not entitled to reimbursement for same.

There also was no proof of the reasonableness of the fees submitted.

Petitioner did not make a claim for indemnification for attorney's fees and costs until he filed this petition on October 13, 2023. The OTSC was filed in 2018 a year after his 2017 resignation.

Therefore, respondent argues the petition should be dismissed.

### **Petitioner's Argument**

The only issue to be determined when a school board employee seeks civil indemnification under N.J.S.A. 18A-16-6 is whether the employee was acting within the scope of his employment duties. Mr. Lawless was a special education teacher with respondent when all of these allegations occurred. He was acting in the scope of his employment as a special education teacher. The allegations against Mr. Lawless were unfounded by the state institutional abuse unit. Mr. Lawless was never disciplined for anything. After four institutional abuse investigations had been brought against Mr. Lawless that were unfounded, the superintendent decided that he must be some bad actor and therefore brought sworn charges against him. The superintendent goes to great length and certifies to facts that did not occur but were allegations that the district's own internal investigation uncovered were false and that the children were lying and making up stories. Mr. Lawless knew the charges to be false, but it was not until after the OTSC was filed and discovery produced that petitioner obtained all of the interviews of various people confirming that the incidents did not occur and that the children were lying to get Mr. Lawless fired. The district knew this because their own

employees were saying this. The superintendent knew it was false yet swore to the charges.

Mr. Lawless had been accused four times of doing things he did not do, and then when served with tenure charges, he decided he no longer wanted to work for respondent because of the things he was being accused of. He did not feel that he was being properly supported by the district, so he started applying for other positions. When the tenure charges came in, he found out another district wanted him. He decided he did not want to work any longer for respondent with their constant accusations and lack of support and decided to accept employment with another district. Mr. Lawless did not admit to any wrongdoing or that any of the allegations were true. Mr. Lawless said that the allegations were all false. But rather than going through the process, knowing the respondent did not support him, he resigned and moved on.

Petitioner is not seeking any indemnification for the tenure charges being filed. The time Mr. Wittman's firm is billing as set forth in Exhibit "M" is time spent following the SBE's filing of the OTSC against petitioner. The SBE only knows what they were told. They were told Mr. Lawless resigned, and tenure charges were pending against him and the substance of those charges. Eventually they were provided with the actual charges themselves. Respondent knew what was going on. They were getting subpoenas from Mr. Wittman's office for records and witnesses' testimony. The procedure referenced by respondent's counsel for indemnification is not in writing or set forth in any Board policy. Mr. Lawless went to his union and asked for an attorney, and they gave him one. Mr. Wittman's firm has been paid, but Mr. Lawless still has the right of indemnification against the responsible party, which is respondent.

As set forth in exhibit "M" there is a breakdown as to what has been paid at the NJEA rate and what is owed, based on Mr. Wittman's firm's billing. He has been paid \$74,840.45 and what he is claiming is \$133,422.50 in counsel fees and \$3,263.58 in costs, based on Greene v. Board of Education of the Township of Irvington, Essex County, 2014 WL 12844631 (OAL Docket No. EDU 4-04772-12), citing Salaam v. Board of Education of the Township of Irvington, Essex County, 2014 WL 503950 (App. Div. 2014). Mr. Lawless had to have an attorney represent him and is entitled to

indemnification. Petitioner is not seeking indemnification for the defense of disciplinary charges brought against him by the respondent. He is seeking indemnification for the defense of the OTSC brought against him by the SBE occasioned by the wrongdoing of respondent who knew the charges were unfounded.

N.J.S.A. 18A-6 states that no one can be held harmless in a disciplinary proceeding instituted against him by the Board. That is not what happened here. The OTSC was brought by the SBE and not the Board. That is what the statute is supposed to protect. The fact that petitioner no longer was an employee of respondent does not matter. He was an employee of respondent when the allegations arose.

Dr. Thomasina Jones Superintendent signed the charges and put the wheels in motion. The statute does not state that there must be an adjudication of the charges. What happened was that the SBE could not prove their case and that is why the OTSC was vacated, which should not prejudice Mr. Lawless who had to defend himself and this went on for five years. The withdrawal of the OTSC is a determination in Mr. Lawless's favor. Respondent created the monster by saying all these things happened when they did not, but this is not a claim for malicious prosecution.

The only issue is whether Mr. Lawless was acting in the scope of his employment when these things occurred.

The Azzaro case is distinguishable from this case in that there was a finding that twelve years was too long. This case only took five years. The Board had no notice in that case which is different from this case. Also, the Board instituted the charges in this case by the superintendent signing the charges and not in that case. It would be unreasonable to require Mr. Lawless to go to respondent and ask for a defense when they were the cause of his problems.

Although the parties raised various factual issues concerning the circumstances surrounding the underlying tenure charges, both stipulated that this matter was ripe for summary disposition.

The following facts are not in dispute and I **FIND** as follows:

Petitioner is a certified teacher by the N.J. Department of Education and commenced employment with the respondent in the fall of 2008 as a special education teacher and later attained tenure in that position.

On August 30, 2017, respondent issued sworn tenure charges against petitioner for conduct unbecoming and other just cause.

Respondent did not certify the tenure charges against petitioner, as he found employment elsewhere and there was an agreement reached between the parties that petitioner would resign, and respondent would waive the sixty-day notice provision to allow him to resign and take the new position.

The Board never voted on the tenure charges and accepted petitioner's resignation at its September 29, 2017, meeting.

Pursuant to the notification provisions set forth in N.J.A.C. 6A:9B-4.3, respondent's superintendent did send a letter to the SBE dated January 24, 2018, advising them that petitioner submitted his letter of resignation on September 29, 2017, effective September 30, 2017, while he was on administrative leave with pay, while the respondent conducted an investigation into his conduct which lead to the filing and serving of Sworn Tenure Charges against him. (Exhibit B, Respondent's motion to Dismiss.) Although the tenure charges against petitioner were outlined in the letter, they were not attached. The parties agreed that sometime later, the SBE requested a copy of the tenure charges from the respondent, which respondent did provide.

On September 21, 2018, the SBE, on its own initiative, issued an OTSC to petitioner seeking to revoke petitioner's teaching certificates, based on the previous tenure charges.

Respondent was not a party to that action.

Petitioner did not request respondent to provide him with a defense or indemnification as to the SBE's charges when they were filed against him on September 21, 2018.

Petitioner retained counsel and incurred legal fees in the amount of \$133,422.50 and costs in the amount of \$3,263.58 from October 1, 2018, to June 30, 2023. (Certification of petitioner's counsel, Exhibit M.)

By letter, dated July 5, 2023, the SBE advised that at its meeting of June 29, 2023, it voted to vacate the OTSC and that therefore, there was no pending action against petitioner and his certificates were valid and in good standing.

On October 13, 2023, petitioner filed his Verified Petition dated September 27, 2023, seeking reimbursement for counsel fees and costs against respondent incurred in defense of the SBE's OTSC to suspend or revoke his teaching certificates.

The filing of this petition on October 13, 2023, was the first time petitioner put respondent on notice that he was seeking indemnification for his legal fees and costs associated with his defense of the SBE's OTSC against him filed on September 21, 2018.

### **LEGAL ANALYSIS AND CONCLUSION**

Both parties seek relief pursuant to N.J.A.C. 1:1-12.5, which provides that summary decision should be rendered "if the papers and discovery which have been filed, together with the affidavits, if any, show that there is no genuine issue as to any material fact challenged and that the moving party is entitled to prevail as a matter of law." Our regulation mirrors R. 4:46-2(c) which provides that "the judgment or order sought shall be rendered if the pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact challenged and that the moving party is entitled to a judgment or order as a matter of law."

A determination whether a genuine issue of material fact exists that precludes summary decision requires the 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 fact finder to resolve the allegedly disputed issue in favor of the non-moving party. Our courts have long held that “if the opposing party offers . . . only facts which are immaterial or of an insubstantial nature, a mere scintilla, ‘fanciful frivolous, gauzy or merely suspicious,’ he will not be heard to complain if the court grants summary judgment.” Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520, 529 (1995) (citing Judson v. Peoples Bank and Trust Co., 17 N.J. 67, 75 (1954)).

The “judge’s function is not himself [or herself] to weigh the evidence and determine the truth of the matter but to determine whether there is a genuine issue for trial.” Brill, 142 N.J. at 540 (citing Anderson v. Liberty Lobby, 477 U.S. 242, 249, 106 S. Ct. 2505, 2511, 91 L. Ed. 2d 202, 213 (1986)). When the evidence “is so one-sided that one party must prevail as a matter of law,” the trial court should not hesitate to grant summary judgment. Liberty Lobby, 477 U.S. at 251-2, 106 S. Ct. at 2512, 91 L. Ed. 2d at 214.

**I CONCLUDE** that this matter is ripe for summary decision since there are no issues of material fact in dispute and that respondent is entitled to summary decision as a matter of law as set forth below.

“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 Education, City of Trenton of Mercer County, 221 N.J. 192, 201-202 (2015).

N.J.S.A. 18A:16-6 provides:

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; provided that

- a. no employee shall be entitled to be held harmless or have his defense costs defrayed in a disciplinary proceeding instituted against him by the board or when the employee is appealing an action taken by the board; and
- b. indemnification for exemplary or punitive damages shall not be mandated and shall be governed by the standards and procedures set forth in N.J.S. 59:10-4.

Any board of education may arrange for and maintain appropriate insurance to cover all such damages, losses and expenses.

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.

N.J.S.A. 18A:16-6 is in contrast to N.J.S.A. 18A:16-6.1, the statute that provides for indemnification of education employees charged with criminal or quasi-criminal actions. It provides:

Should any criminal or quasi-criminal action be instituted against any such person for any such act or omission and should such proceeding be dismissed or result in a final disposition in favor of such person, the board of education shall reimburse him for the cost of defending such proceeding, including reasonable counsel fees and expenses of the original hearing or trial and all appeals. No employee shall be entitled to be held harmless or have his defense costs defrayed as a result of a criminal or quasi-

criminal complaint filed against the employee by or on behalf of the board of education.

Any board of education may arrange for and maintain appropriate insurance to cover all such damages, losses and expenses.

[N.J.S.A. 18A:16-6.1(emphasis added).]

In Edison v. Mezzacca, 147 N.J. Super. 9 (App. Div. 1977), the Appellate Division held that an employee seeking indemnification “does not have the absolute right to counsel of his own choosing at municipal expense.” Id. at 14. The Appellate Division specifically noted that a right to absolute reimbursement was provided for only when the municipality’s obligation was conditional on the outcome of the litigation. Ibid. However, there was no right of reimbursement when “the obligation to provide for the defense arose at the inception of the proceeding and was independent of the outcome of the proceeding.” Id. at 15.

In this case, petitioner’s right to indemnification is governed by N.J.S.A. 18A:16-6, which contains no requirement that the employee be successful in the litigation to be indemnified. The relevant language in N.J.S.A. 18:16-6 can be contrasted with N.J.S.A. 18A16-6.1, which provides for indemnification in criminal actions only when the proceedings are dismissed or result in a final disposition favorable to the employee. Here, there is no dispute that SBE proceedings are an administrative action, not a criminal action. Therefore, although petitioner’s claim arises out of a different indemnification statute than the one at issue in Edison, it nonetheless bears the same characteristics, in that it arose at the inception of the proceedings and was independent of the outcome of the proceedings.

In Azzaro v. Bd. of Educ. of Trenton, 477 N.J. Super. 427 (App. Div. 2023) the Court concluded that N.J.S.A. 18A:16-6 does not allow school board employees to wait until the final disposition of a civil or administrative action filed against them before seeking defense costs and indemnification from a school board. The employee must provide the school board with reasonable notice after the initiation of the proceeding, unlike the procedure set forth in N.J.S.A. 18A16-6.1, which provides that an employee



cannot seek reimbursement of defense costs and indemnification until the conclusion of a criminal or quasi criminal action.

In this case, petitioner failed to notify the respondent of his request for indemnification until five years of legal bills had accumulated. Those bills were generated by a law firm which the respondent had no input in choosing. Although in Azzaro petitioner waited twelve years before seeking indemnification which the court found was not reasonable, likewise, I **CONCLUDE** that petitioner's waiting five years in this case to put respondent on notice it was seeking indemnification pursuant to N.J.S.A. 18A:16-6 was also not reasonable in that petitioner should have put respondent on notice at the inception of the administrative charges brought against him by the SBE in September, 2018.

### **ORDER**

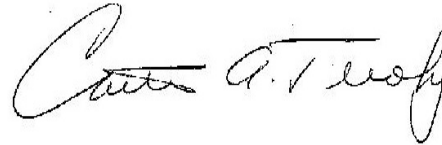
For the reasons stated above, it is hereby **ORDERED** that respondents motion for summary decision is hereby **GRANTED**. Petitioner's motion for summary decision is **DENIED** and petitioner's appeal is **DISMISSED**.

I hereby **FILE** this initial decision with the **ACTING COMMISSIONER OF THE DEPARTMENT OF EDUCATION** for consideration.

This recommended decision may be adopted, modified, or rejected by the **ACTING 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 **ACTING COMMISSIONER OF THE DEPARTMENT OF EDUCATION**. Exceptions may be filed by email to [ControversiesDisputesFilings@doe.nj.gov](mailto: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 16, 2024

DATE

CATHERINE A TUOHY, ALJ

Date Received at Agency:

Date Mailed to Parties:

CAT/gd

## **APPENDIX**

### **BRIEFS**

#### **For petitioner**

- Petitioner's Notice of Cross-Motion for Summary Decision, Certification of Counsel, Statement of Material Facts and Brief in support of petitioner's cross-motion, with attached Exhibits A through M, dated April 29, 2024

#### **For respondent**

- Respondent Bridgeton BOE's November 30, 2023, Notice of Motion to Dismiss in Lieu of an Answer to Petition and Brief in Support of Motion to Dismiss with attached Exhibits A, B and C
- Respondent's May 24, 2024, Brief in Opposition to Petitioner's Cross-Motion for Summary Decision and Reply in further Support of its Motion to Dismiss