

117-25E
OAL Dkt. No. 03817-25
Agency Dkt. No. 52-2/25

New Jersey Commissioner of Education
Order on Emergent Relief

Dawn Haynes,

Petitioner,

v.

Board of Education of the City of Newark, Essex
County,

Respondent.

The record of this emergent matter, the sound recording of the hearing at the Office of Administrative Law (OAL), and the recommended Order of the Administrative Law Judge (ALJ) have been reviewed.

Petitioner, Dawn Haynes, seeks an Order directing the Newark Board of Education (Board) to resume payment of her attorneys' fees incurred in connection with a School Ethics complaint brought against her while she was serving as a member of the Board. On November 26, 2024, the Board rescinded a prior resolution authorizing its payment of petitioner's counsel fees. Petitioner asserts that pursuant to *N.J.S.A. 18A:12-20*, the Board is required to finance her representation in the underlying ethics matter, which is still ongoing.

Petitioner filed a motion for emergent relief with the Commissioner, and the matter was transmitted to the OAL. After reviewing the written submissions and oral arguments, the ALJ

granted petitioner's request for emergent relief and reinstated the original resolution authorizing payment of petitioner's counsel fees on a monthly basis.

Upon review, the Commissioner disagrees with the ALJ that petitioner has demonstrated entitlement to emergent relief. In accordance with *N.J.A.C. 6A:3-1.6(b)*, a grant of emergent relief is considered an extraordinary remedy that can only be issued upon a finding that petitioner has met the four-pronged standard set forth in *Crowe v. DeGioia*, 90 N.J. 126 (1982). To obtain emergent relief, petitioner must establish that: (1) she will suffer irreparable harm if the requested relief is not granted; (2) the legal right underlying her claim is settled; (3) she has a reasonable likelihood of prevailing on the merits of the underlying claim; and (4) she will suffer greater harm than respondent will suffer if the requested relief is not granted. *Id.* at 132-34; *N.J.A.C. 6A:3-1.6(b)*.

The controlling statute regarding the indemnification of a Board member is *N.J.S.A. 18A:12-20*, which provides in relevant part:

Whenever a civil, administrative, criminal or quasi-criminal action or other legal proceeding has been or shall be brought against any person 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. . . the board of education 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.

Therefore, indemnification under *N.J.S.A. 18A:12-20* is required only for conduct that arises out of and in the course of the performance of the board member's duties.

Case law makes it clear that petitioner's indemnification claim is not ripe for review at this time. In *Robert Curcio v. Bd. of Educ. of the South Orange-Maplewood School District, Essex Cty.*, a former school employee sought an order requiring the board of education to indemnify

him under *N.J.S.A. 18A:16-6*.¹ OAL DKT. NO. EDU 04142-24 (Initial Decision May 22, 2024), *adopted*, Commissioner Decision No. 239-24 (June 24, 2024). In *Curcio*, at the time the petition was filed with the Commissioner, no court proceedings or discovery had taken place regarding the underlying complaint. The ALJ concluded, and the Commissioner affirmed, that petitioner's claim was not fit for judicial review because additional factual development was required regarding whether petitioner was acting within the scope of his employment when he committed the conduct alleged in the complaint. Further, the ALJ concluded, and the Commissioner affirmed, that indemnification should be determined later when more facts were available. *Ibid*. Similarly, in the instant matter, petitioner's indemnification claim may be revisited once the facts in the underlying ethics matter are further developed.

In the Order granting emergent relief, the ALJ acknowledged that in two matters brought by other members of the Board, the Commissioner had concluded that those petitioners' claims were not settled because it was not established that their actions arose out of and in the course of the performance of their duties as members of the Board. *See Murray-Thomas v. Bd. of Educ. of the City of Newark et al.*, Commissioner Decision No. 57-25E (Feb. 24, 2025); *Williams v. Bd. of Educ. of the City of Newark et al.*, Commissioner Decision No. 58-25E (Feb. 24, 2025). Nonetheless, the ALJ found that petitioner's circumstances differ from those of the petitioners in *Murray-Thomas* and *Williams* because, as to Haynes, the Board's resolution specifically cites to the language of *N.J.S.A. 18A:12-20*, which indicates that indemnification is required for any act

¹ Both *N.J.S.A. 18A:16-6* ("Indemnity of officers and employees") and *N.J.S.A. 18A:12-20* ("Indemnity of members of boards of education") require indemnification for an "act or omission arising out of and in the course of performance of" the duties of the individual's position. While there are some differences between the two statutes that are not relevant to this matter, the Commissioner concludes that the use of the same language in this portion of each statute warrants applying the reasoning of the *Curcio* decision here.

or omission arising out of and in the course of the performance of duties as a member of the Board. According to the ALJ, there can therefore be no “dispute that the Board has already considered and determined that Ms. Haynes was acting out of and in the course of the performance of her duties as a member when she took the actions that resulted in ethics charges.” Initial Decision, at 9-10. As such, the ALJ found that the Commissioner’s reasoning in *Murray-Thomas* and *Williams*, as well as analysis in *Curcio*, did not apply. However, the authority to make the final determination regarding whether petitioner was acting out of and in the course of the performance of her duties as a member of the Board belongs to the Commissioner, not the Board.² And, just as in *Murray-Thomas* and *Williams*, the Commissioner finds that further proceedings are required to make that determination, such that petitioner has failed to demonstrate that her right to indemnification is well-settled.

Accordingly, petitioner’s request for emergent relief is denied.³ This case shall continue at the OAL with such proceedings as the parties and the ALJ deem necessary to bring it to closure.

IT IS SO ORDERED.


COMMISSIONER OF EDUCATION

Date of Decision: April 7, 2025
Date of Mailing: April 7, 2025

² For this reason, the Commissioner disagrees with the ALJ’s statement that petitioner’s claim is not whether there should be indemnification, but “whether the Board could unilaterally terminate their already established obligations under *N.J.S.A. 18A:20*.” Initial Decision at 6. The Board’s obligations under *N.J.S.A. 18A:20* have not already been established.

³ Because all *Crowe* factors must be satisfied to obtain emergent relief, the Commissioner need not analyze the remaining three factors. The Commissioner does not find *Waste Management of N.J., Inc. v. Union Co. Utilities Authority*, 399 *N.J. Super.* 508 (App. Div. 2008), cited by the ALJ, to be applicable. The public policy in favor of board member indemnification, on which the ALJ heavily relied, does not “greatly require” the grant of emergent relief in this matter, as indemnification payment can be made following the conclusion of the proceedings if appropriate, thereby meeting the goals of the indemnification statute.



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

ORDER GRANTING

EMERGENCY RELIEF

OAL DKT. NO. EDU 03817-25

AGENCY DKT. NO. 52-2/25

DAWN HAYNES,

Petitioner,

v.

**BOARD OF EDUCATION OF THE
CITY OF NEWARK, ESSEX COUNTY,**

Respondents.

Calvin W. Souder, Esq., for petitioner (Souder Law Group, LLP, attorneys)

Lester E. Taylor, III, Esq., Esq. for respondents (Taylor Law Group, LLC,
attorneys)

BEFORE **WILLIAM J. COURTNEY**, ALJ:

STATEMENT OF THE CASE

Petitioner, Dawn Haynes brings this motion for emergent relief seeking an Order directing the Board of Education of the City of Newark ("Board") to reinstate a rescinded resolution (the "Original Resolution") that authorized payment of the counsel fees and costs she incurred in defending a school ethics complaint brought against her while serving as a member of the Board. The Original Resolution was based on the mandate

in N.J.S.A. 18A:12-20 requiring a board of education to defray all costs of defending a civil, administrative, criminal or quasi criminal action or other legal proceeding brought against any person for an act or omission arising out of and in the course of their performance of their duties as a member of a board of education.

The board maintains it had the right to rescind the Original Resolution authorizing the payment of reasonable counsel fees and costs associated with petitioner's defense "upon learning that Petitioner's legal position in defense of the school ethics complaint is directly contrary to the Board's legal interests, and, if Petitioner is successful in this position, the Board's interests would be severely compromised."

FACTUAL DISCUSSION

On February 23, 2023, in accordance with their obligations under N.J.S.A. 18A:12-20, the Board adopted four separate resolutions authorizing the payment of counsel fees and costs associated with the defense of an ethics complaint filed against four sitting members of the Board, one of whom was petitioner, Dawn Haynes. (See Exhibit A). The ethics complaint, which is the subject of a separate proceeding before a different Administrative Law Judge, was brought by the principal of a public high school known as the Newark School of Global Studies ("NSGS") in connection with efforts made by the four Board members to investigate allegations of bias and harassment at NSGS. The resolutions remained in effect for over one year and nine months during which time the Board members' costs and counsel fees related to the defense of the ethics complaint were paid. On November 26, 2024, the District rescinded the three outstanding resolutions¹.

In response to the Board's rescission of the resolutions, two of the remaining three Board members (Crystal Williams and A'Dorian Murray-Thomas) filed emergent applications seeking essentially to reinstate the Original Resolution that authorized the payment of their defense costs. Both of those emergent applications were heard by

¹ At some point in time, the complaint against one of the four Board members was resolved and the Ethics complaints against the other three, one of whom was petitioner Dawn Haynes, continued.

Andrew M. Baron, ALJ. Judge Baron issued his ruling on the Murray-Thomas application on January 8, 2025. (See Exhibit B). His decision on the Williams application was issued on January 28, 2025. (See Exhibit C). Both decisions concluded that the standards for granting emergent relief identified in Crowe v. DeGioia, 90 N.J. 126 (1982) had been established, and that emergent relief was warranted. Accordingly, both decisions granted the petitioner's application for emergent relief as it pertained to the original resolution authorizing the payment of reasonable counsel fees, paid on a regular basis on the district's monthly bill list to defend against the original ethics complaint.

As indicated above, the only reason provided by the Board (in their opposition to this application) for rescinding the Original Resolution to pay legal fees and costs was that they learned petitioner's legal defense in the ethics matter was directly contrary to the Board's legal interests. However, a review of Judge Baron's January 8, 2025 decision in Murray-Thomas motion, reveals that the following additional information was provided to Judge Baron by the Board:

Somewhere along the line following the August 2024 payment, the district learned that in connection with [Murray-Thomas's] defense against the [ethics] complaint, she through her counsel had issued a subpoena to a third-party consultant retained by the district seeking to secure a document that the district had previously classified as "confidential."

The district only learned about the document subpoenaed in a roundabout way since it was not notified or copied by petitioner's counsel on the subpoena that went out. As a result, additional litigation has ensued, with the attorney for the consultant filing a 'Motion to Quash' the subpoena, which necessitated as an interested party, the district filing a Motion to Intervene in the ethics matter since it previously classified the document as "privileged" and did not want it released or disclosed. It is unclear why other alternate means of securing the document were not explored by petitioner's counsel.

[See Exhibit B, p.4]

The information provided to Judge Baron in the Murray-Thomas application leaves little doubt that the issuance of a subpoena by attorney for Murray-Thomas is the basis for the Board's rescission of the Original Resolution authorizing the payment of legal services and costs to defend the ethics complaint against Ms. Haynes. However, after a review of all the documents and pleadings submitted in support and in opposition of this application for emergent relief, I **FIND** no credible evidence that petitioner Haynes had anything to do with the issuance of the subpoena that the Board believes is adverse its interest. I also **FIND** that the Board has failed to provide any credible evidence that Ms. Haynes has taken any "legal position" in the defense of the school ethics complaint that is directly contrary to the Board's legal interests.

On February 26, 2025, almost a month after Judge Baron issued his decision in the Williams matter, a separate Verified Petition and the instant Notice of Motion for Emergent relief was filed by Calvin Souder, Esq of the Souder Law Group, LLP on behalf of Ms. Haynes. Ms. Williams and Ms. Murray-Thomas were both represented by Janelle Edwards-Stewart, Esq. of Porzio, Bromberg and Newman, P.C. The fact that Ms. Haynes was not represented by the same attorney who represented the other two Board members is important because according to Judge Baron's decision, it was the attorney representing Murray-Thomas (who was the same attorney representing Williams) who issued the subpoena that the Board is relying upon to justify their decision to rescind the Original Resolution authorizing the payment of Ms. Haynes's costs and attorney fees. I **FIND** no credible evidence has been presented that would indicate that either Ms. Haynes or her attorney had any involvement in or knowledge of the issuance of the subpoena challenged by the Board.

Ms. Haynes filed her Verified Petition and Motion for Emergent Relief on February 26, 2025. The Verified Petition Alleged that the Board Ceased their indemnification of Ms. Haynes as required by N.J.S.A 18A:12-20 and that the Board is legally estopped from supplementing its resolution to provide reasons for the decision to rescind the Original resolution after the fact. In her motion she seeks an Order compelling the Board to reinstate their obligation under the Original resolution to indemnify her concerning the costs and legal fees associated with her defense of the ethics matter. In support of her Motion, she provided a copy of Judge Barron' February 24, 2025 decision in the Williams

matter (see Exhibit C). Ms. Haynes represented in her verified petition that identical petitions for emergent relief were filed by Williams and Murray-Thomas and that Judge Baron had found that in both of those cases the standard for emergent relief prescribed by Crowe v. DeGioia, 90 N.J. 126 (1982) had been met and that by doing so, he had returned the petitioners to “the original status quo.” Accordingly, Ms. Haynes now seeks return to the original status quo by seeking the resumption of mandatory payment for the defense costs and fees she continues to incur in the ongoing ethics case.

Unknown to Ms. Haynes or her counsel, two days before the filing of her Verified Petition and Motion for Emergent Relief, the Acting Commissioner of Education entered an Order which reversed Judge Baron’s January 8, 2025 Order and denied Murray-Thomas’s request for emergent relief. (See Exhibit D). In His Order, the Acting Commissioner disagreed with Judge Baron that petitioner Murray-Thomas had demonstrated entitlement to emergent relief. He stated that in accordance with N.J.A.C. 6A:3-1.6(b), a grant of emergent relief is considered an extraordinary remedy and can only be issued upon a finding that the petitioner has met the four-pronged standard set forth in Crowe v. DeGioia. In his review of the Crowe standards, he found that petitioner Murray-Thomas had not met the requirement that she show the legal right underlying her claim is settled.

In the course of analyzing this standard, the Acting Commissioner referred to N.J.S.A. 18A:12-20 as the “the controlling statute regarding the indemnification of a Board member.” In his review of the statute he concluded that indemnification is required only for conduct that “arises out of and in the course of the performance of the board member’s duties.” The Acting Commissioner then reasoned (citing page 6 of the January 8, 2025 Order) that although Judge Baron indicated that Murray-Thomas was acting under the purview of her sworn duties, that fact has not yet been established. He went on to state that “[f]urther proceedings are required to determine whether [petitioner Murray-Thomas’s] conduct in the underlying ethics matter arose out of and in the course of her duties as a board member.”

Given the plain language in the Acting Commissioner’s decision, I **FIND** that that when the Acting Commissioner was determining whether the legal right to Murray-

Thomas's claim was settled, he was not considering the claim she was asserting. The claim asserted in both the Williams and Murray-Thomas application had nothing to do with whether there should be indemnification or whether their claims for indemnification had been settled. The decision to indemnify had already been made on February 23, 2023, when Original Resolution authorizing the payment of defense costs and fees. The claim asserted in the two prior applications and the claim raised in the Haynes application for emergent relief is whether the Board could unilaterally terminate their already established obligations under N.J.S.A. 18A:12-20 because they believe a Board member has taken a legal position in defense of the school ethics complaint is directly contrary to the Board's legal interests. Accordingly, when determining under Crowe if the legal right to Ms. Haynes' claim is settled, I **FIND** that the claim at issue is whether taking a legal position in defense of ethics charges that is directly contrary to the Board's legal interests exempts the Board from complying with their legal obligations under N.J.S.A. 18A:12-20 and thus a permissible basis for unilaterally terminating the Original Resolution. This, of course, is assuming that the Board can first prove that Ms. Haynes has taken a legal position that is directly contrary to the Board's legitimate legal interests.

LEGAL STANDARD

Where authorized by law and where irreparable harm will result without an expedited decision granting or prohibiting some action or relief connected with a contested case, emergency relief pending a final decision on the whole contested case may be ordered upon the application of a party. N.J.A.C. 1:1-12.6(a). With respect to school laws in particular, the Commissioner has jurisdiction to hear and determine all controversies and disputes arising under school laws, except higher education, or under the rules of the State board or of the Commissioner. N.J.S.A. 18A:6-9. Where the subject matter of the controversy is a particular course of action by a district board of education or any other party subject to the jurisdiction of the Commissioner, the petitioner may include with the petition of appeal, a separate motion for emergent relief or a stay of that action pending the Commissioner's final decision in the contested case. N.J.S.A. 6A:3-1.6(a). A motion for a stay or emergent relief must be accompanied by a letter memorandum or brief which must address the following standards to be met for granting such relief pursuant to Crowe v. DeGioia, 90 N.J. 126 (1982):

1. The petitioner will suffer irreparable harm if the requested relief is not granted;
2. The legal right underlying petitioner's claim is settled;
3. The petitioner has a likelihood of prevailing on the merits of the underlying claim; and
4. When the equities and interests of the parties are balanced, the petitioner will suffer greater harm than the respondent will suffer if the requested relief is not granted.

N.J.A.C 6A:3-1.6(b)

Although it is generally understood that all Crowe factors must weigh in favor of injunctive relief, in Waste Management of New Jersey, Inc. v. Union County Utilities Authority, 399 N.J. Super. 508 (App. Div. 2008) it was recognized that

A court may take less a less rigid view than it would after as final hearing when the interlocutory injunction is merely designed to maintain the status quo. General Elec. Co. v. Gem Vacuum Stores, Inc., 36 N.J. Super. 234, 236-37, 115 A.2d 626 (App.Div.1955). The issuance of an interlocutory injunction must be squarely based on an appropriate exercise of sound judicial discretion. N.J. State Bar Ass'n v. Northern N.J. Mortgage Assocs., 22 N.J. 184, 194, 123 A.2d 498 (1956); Bancroft & Sons Co. v. Shelley Knitting Mills, Inc., 268 F.2d 569, 573 (3d Cir.1959), which--when limited to preserving the status quo during the suit's pendency--may permit the court to place less emphasis on a particular Crowe factor if another greatly requires the issuance of the remedy. Ibid.

By the same token, in some cases, such as when the public interest is greatly affected, a court may withhold relief despite a substantial showing of irreparable injury to the applicant. Yakus v. United States, 321 U.S. 414, 440, 64 S. Ct. 660, 675, 88 L. Ed. 834, 857 (1944). As a result, it was recognized in Yakus that courts, in the exercise of their equitable powers, "may, and frequently do, go much farther both to give and withhold relief in furtherance of the public

interest than they are accustomed to go when only private interests are involved." Id. at 441, 64 S. Ct. at 675, 88 L. Ed. at 858 (quoting Virginian Ry. Co. v. Sys. Fed'n, 300 U.S. 515, 552, 57 S. Ct. 592, 601, 81 L. Ed. 789, 802 (1937)).

[Id. at 520-21]

In Garden State Equality v. Dow, 216 N.J. 314 (2013), the New Jersey Supreme Court recognized that in acting only to preserve the status quo, the court may place less emphasis on a particular Crowe factor if another greatly requires the issuance of the remedy. It also recognized that when a case presents an issue of "significant public importance", a court must consider the public interest in addition to the traditional Crowe factors. Id. at 320-321, citing McNeil v. Legis. Apportionment Comm'n, 176 N.J. 484 (2003).

The New Jersey Legislature long ago established public policy in favor of encouraging and in fact requiring boards of education to indemnify individuals most of whom serve voluntarily as members of local boards of education for legal fees in certain types of legal proceedings, including but not limited to formal grievances filed in the form of ethics complaints against sitting and/or former school board members. See N.J.S.A. 18A:12-20 et. seq. Accordingly, a board member seeking indemnification is not simply requesting monetary relief. Indemnification under is a mandatory requirement and a matter of public policy. I **FIND** this public policy substantially outweighs the Boards claim that continued compliance with N.J.S.A.18A:12-20 negatively impacts the public interest. No credible evidence has been presented that would indicate that Ms. Haynes' actions cause the issuance of the subpoena or, as the Board asserts, required the expense of public funds to intervene in the ethics matter to challenge the subpoena.

Pursuant to N.J.S.A.18A:12-20, boards of education are required to indemnify a board member if a complaint is filed against them in connection with the board member's duties. See Quick v. Old Bridge 308 N.J. Super, 338. (App. Div 1998). The law is liberally construed in favor of covering a board member's counsel fees, regardless of the outcome of the case against them. (Emphasis added). See also, Errington v. Mansfield Twp. Bd. of Ed. 100 N.J. Super. 130 (App. Div. 1986).

The policy in favor of covering a board member's counsel fees also applies to administrative matters Matthews v. Englewood, OAL Dkt. No. EDU 01228-08 (2010).

In Opposition to the present motion for emergent relief, the Board argues that this motion must be denied for the same reason the Murray-Thomas matter was dismissed because this case contains all the same questions of fact and law. I **FIND** this argument to be unpersuasive. The questions of fact here are not the same as the facts contained in either of the other two matters because the issuance of the subpoena, which triggered the recission at issue, was not the result of any action taken by Ms. Haynes or her attorney. Moreover, no facts have been offered, and no evidence has been provided that would show that either Ms. Haynes or her attorney colluded with anyone else to suggest or secure the issuance of the subpoena.

Turning to the Board's assertion that this case contains the same question of law and the inference that all three cases must end with the same result, I again disagree. First, the Murray-Thomas case is the only one that has been decided by the Acting Commissioner. As indicated above, the legal right that must be deemed settled in the analysis of the Crowe factors is petitioner's legal right to have the indemnification continue. The determination as to whether the petitioner is entitled to indemnification under N.J.A.C. 18A: 12-20 has already been made. One needs only to look at the plain language contained in all three of the 2/23/23 resolutions (See Exhibit A) to confirm that the Board was aware indemnification is only required when the act or omission in question arose out of and in the course of the performance or the Board member's duty as a member of the Board. The third paragraph in each of the 1/23/23 Resolutions reads as follows:

WHEREAS, N.J.S.A. 18A:12-20 requires the Board to indemnify members of the Board for any act or omission arising out of and in the course of the performance of her duties as a member of the board of education.

The WHEREAS provisions in a resolution, also known as the preamble to the resolution, consist of statements of background information and reasons why the resolution should be adopted. Given this language, there is no logical way to dispute that the Board has

already considered and determined that Ms. Haynes was acting out of and in the course of the performance of her duties as a member when she took the actions that resulted in ethics charges. The Board's argument that petitioners' request for emergent relief must be denied because the same has not been determined is without merit.

CONCLUSIONS OF LAW

In Ms. Haynes application for emergent relief, she seeks injunctive relief requiring the Board to continue paying the attorney's fees and costs associated with an ethics complaint filed by a District employee and prohibiting the Board for taking any future action that will interfere with her attorney client relationship.

Analysis Of The Crowe Factors

1. Irreparable Harm

For the same reasons Judge Baron found in the Murray-Thomas and Williams matters, I **FIND** that Ms. Haynes has met her burden of proof in having met all 4 of the Crowe standards. I further **FIND** irreparable harm will undoubtedly occur to Ms. Haynes case if indemnification for legal defense costs are not granted. The relief she is seeking is not merely monetary in nature as the Board maintains. Rather, she seeks the ability to defend herself in an ongoing ethics matter which, if not defended, is likely to result in a finding that will damage her reputation. The rescission of the Original Resolution also affects her ability to assert a robust defense against a claim filed against her based on conduct she performed in the course of her duties as a Board member. Money damage is also not an issue in the ethics matter and Ms. Haynes is not seeking indemnification for money damages. Moreover, because legislature has established a public policy in favor of encouraging and in fact requiring boards of education to indemnify board members in these types of proceedings, Ms. Haynes has a right to be defended and is seeking enforcement of that right in this emergent application.

Ms. Haynes' public policy right to be defended was specifically recognized by the Board in their November 23, 2023 Resolution. The Resolution specifically cited to their

obligations under N.J.S.A. 18A:12-20 to provide that defense. The injunctive relief sought here is not to establish that her right to this relief exists before that right can be determined at a final hearing. Her right to relief has already been established by the resolution of the Board. The relief sought here is the vacation of the resolution rescinding that right and to enjoin any further interference with that right until a full hearing on the Verified Petition can be held. In other words, Ms. Haynes is seeking injunctive relief to maintain the status quo.

2. The Legal Right Underlying Petitioner's Claim Is Settled

The claim at issue is Ms. Haynes right to continued indemnification of the legal costs and attorney fees she is incurring in the defense of ethics charges brought against her as a sitting Board member. N.J.S.A. 18A:12-20 establishes the right she seeks to enforce. I **FIND** that the November 23, 2023 resolution was passed by the Board pursuant to and in accordance with N.J.S.A. 18A:12-20 and established her right to the to claim for indemnification. I also **FIND** that the Board has provided no credible evidence that action or inaction exempts them from their mandatory obligations under N.J.S.A. 18A:12-20.

While I do recognize that the Acting Commissioner of Education found in the Murray-Thomas matter that her claim was not settled because it was not established that she was “acting under the purview of her sworn duties”, there is nothing in the record before me in this matter that would compel a similar finding. Indeed, the record before me indicates that there was a specific finding by the Board itself, memorialized in the November 23, 2023 resolution, that Ms. Haynes was acting “out of and in the course of the performance of her duties as a member of board of education” at the time the act or omission at issue occurred. Unlike the decision in Robert Curcio v. The Bd. of Educ. of the South Orange-Maplewood School District, Essex County, OAL DKT.NO. EDU 04142-24 (initial Decision May 22, 2024) adopted, Commissioner Decision No. 239-24 (June 2024), where there had been no determination that petitioner was acting within the scope of his duties, a determination has already been made that Ms. Haynes’ conduct arose out of and in the course of the performance of her duties.

The only challenge the Board has made to Ms. Haynes' right to continued indemnification is that she took a position in defense of the school ethics complaint that was contrary to the Board's interests. There has been nothing provided by the Board that convinces this tribunal that this claimed conflict of interest prevents them from complying with their acknowledged and mandated obligations under N.J.S.A. 18A:12-20.

3. **The Petitioner Has A Likelihood Of Prevailing On The Merits Of The Underlying Claim**

Based upon the public policy established by N.J.S.A. 18A:12-20, the acknowledgment of the Board that Ms. Haynes is entitled to indemnification and the fact that the Board was indemnifying her for a year and nine months, I **FIND** it is likely that Ms. Haynes will succeed on the merits of her claim. As indicate above, there has been nothing provided by the Board that convinces this tribunal that their claimed conflict of interest exempts them from complying with their mandatory obligations under N.J.S.A. 18A:12-20.

4. **When The Equities And Interests Of The Parties Are Balanced, The Petitioner Will Suffer Greater Harm Than The Respondent Will Suffer If The Requested Relief Is Not Granted.**

Public policy is well established that a public official who gets sued or as in this case is charged with an ethics violation is entitled to a defense and to be indemnified by the governing body unless their acts were ultra vires or outside the scope of their duties. The Board has already acknowledged that Ms. Haynes is entitled to indemnification, and Ms. Haynes is now requesting injunctive relief to maintain the status quo.

In opposition to Ms. Haynes' request, the Board asserts that she has taken a position in the ethics matter that is contrary to the interests of the Board which in turn justifies their cessation of her mandatory indemnification. Because they have provided no details regarding harm that this alleged conflict of interest has had on the Board and because I **FIND** there is no credible evidence in the record to show that the Board would

be subject to any harm if the agreement to indemnify continues, I **FIND** that the balancing of equities and interests weighs in favor of Ms. Haynes.

In reaching this conclusion, I have also considered additional information cited above from Judge Baron's decision in the Williams matter concerning actions that the Board claims they were required to take in response to a subpoena by Williams' counsel in the ethics matter. The Board claims the issuance of the subpoena necessitated them to intervene in the ethics matter, presumably join in a motion to quash the subpoena that had already been filed by the party that received the subpoena, because the Board had originally designated the requested document as confidential. I **FIND** that there has been no credible evidence presented that would indicate that either Ms. Haynes or her attorney were involved in any way in subpoenaing the document.

In addition to finding that Ms. Haynes has met all the standards set forth in Crowe, because her application was for injunctive relief to maintain the status quo, I also **FIND** that her meeting all four standards was not necessary. Given the individual strength of each factor, even if less or no emphasis was placed on one, the remaining factors would suffice to require the issuance of the relief sought by Ms. Haynes. See Waste Management of New Jersey, Inc. v. Union County Utilities Authority, Supra, at 520-521.

Finally, I **FIND** the Board's argument that the emergent relief requested by Ms. Haynes be denied because her current attorney is not the same law firm that was authorized by the original resolution to receive payment of legal fees and costs to be without merit. The firm originally authorized to receive payment of costs and fees in Resolution 15.2 (See Exhibit A) was Souder Shabazz & Woolridge Law Group ("Souder Shabazz"). As a member of Souder Shabazz, Calvin W. Souder, Esq. has been representing Ms. Haynes. Apparently, Souder Shabazz has recently realigned and Calvin W. Souder, Esq. continues to represent Ms. Haynes but now through Souder Law Group, Inc., I **FIND** that this change in the structure of the law firm representing Ms. Haynes has no impact on the Board's continuing obligation to indemnify Ms. Haynes.

For all of the reasons stated above, I **CONCLUDE** that relief sought by Ms. Haynes is appropriate and necessary and that the status quo should be maintained until a final decision on the verified petition.

ORDER

It is hereby **ORDERED** that the petitioner's application for emergent relief is **GRANTED**; and it is further

ORDERED, that the original February 23, 2023 resolution is reinstated and for the reasons set forth herein, the November 24, 2024 resolution rescinding the agreement is deemed null and void; and it is further

ORDERED, that the original February 23, 2023 resolution be and hereby is amended to substitute the Souder Law Group, LLP as approved by counsel for Dawn Haynes; and it is further

ORDERED, that the Board of Education is enjoined from any further interference with petitioner's attorney client relationship; and it is further

ORDERED that a telephone status conference in this matter shall be held on **April 3, 2025 at 3:30 PM. PLEASE DIAL IN FOR THE CONFERENCE Toll Free Number: 1-866-561-8735; Participant Code: 98897440.**

This Order on application for emergency relief may be adopted, modified or rejected by the **COMMISSIONER OF THE DEPARTMENT OF EDUCATION**, who/which by law is authorized to make a final decision in this matter. The final decision shall be issued without undue delay but no later than forty-five days following the entry of this order. If the **COMMISSIONER OF THE DEPARTMENT OF EDUCATION** does not adopt, modify or reject this order within forty-five days, this recommended order shall become a final decision on the issue of emergent relief in accordance with N.J.S.A. 52:14B-10.

A handwritten signature in cursive script, reading "William J. Courtney", with a long horizontal flourish extending to the right.

March 10, 2025

DATE

db

WILLIAM J. COURTNEY, ALJ