

New Jersey Commissioner of Education
Final Decision

Jennifer Rome and Mellk Cridge, LLC,

Petitioners,

v.

Board of Education of the City of Camden,
Camden 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.

Upon review, the Commissioner concurs with the Administrative Law Judge (ALJ) that petitioners are not entitled to indemnification for legal fees pursuant to *N.J.S.A. 18A:16-6* associated with their successful defense of an Order to Show Cause (OSC) issued by the State Board of Examiners in November 2017 because they did not provide the requisite notice to respondent that they were seeking indemnification until the instant petition was filed in January 2023. Petitioners were obligated to put respondent on notice that they sought defense costs within a reasonable period of time after the OSC was issued. *Azzaro v. Bd. of Educ. of Trenton*, 477 *N.J. Super.* 427 (App. Div. 2023), *cert. denied*, 258 *N.J.* 438 (2024). The Commissioner holds that petitioners' failure to notify respondent of their intent to seek indemnification until more than five years after the OSC was issued was unreasonable.

Accordingly, the Initial Decision is adopted as the final decision in this matter, respondent's cross-motion for summary decision is granted, and the petition of appeal is hereby dismissed.

IT IS SO ORDERED.¹



COMMISSIONER OF EDUCATION

Date of Decision: April 21, 2025
Date of Mailing: April 22, 2025

¹ This decision may be appealed to the Appellate Division of the Superior Court pursuant to *N.J.S.A. 18A:6-9.1*. Under *N.J.Ct.R. 2:4-1(b)*, a notice of appeal must be filed with the Appellate Division within 45 days from the date of mailing of this decision.



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

SUMMARY DECISION

OAL DKT. NO. EDU 01642-23

AGENCY DKT. NO. 23-1/23

**JENNIFER ROME AND
MELLK CRIDGE, LLC,**

Petitioners,

v.

**CITY OF CAMDEN STATE-OPERATED
SCHOOL DISTRICT, CAMDEN COUNTY,**

Respondent.

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

Louis R. Lessig, Esq., for respondent (Brown & Connery, LLP, attorneys)

Record closed: February 3, 2025

Decided: March 18, 2025

BEFORE **JUDITH LIEBERMAN**, ALJ:

STATEMENT OF THE CASE

Petitioners, Jennifer Rome and law firm Mellk Cridge, LLC, filed this action against the City of Camden State-Operated School District, Camden County (District) in which they seek, pursuant to N.J.S.A. 18A:16-6, indemnification for legal fees associated with

their successful defense of an Order to Show Cause (OSC) issued by the Department of Education, State Board of Examiners (SBE or Examiners). Petitioners filed a motion for summary decision in which they contend that they are entitled to indemnification for the costs of defending the OSC notwithstanding that they did not ask the District to provide for the costs of Rome's defense until after the matter was concluded. In so arguing, they contend that Azzaro v. Board of Education of Trenton, 477 N.J. Super. 427 (App. Div. 2023), certif. denied, 258 N.J. 438 (2024), which requires parties seeking provision of defense costs by boards of education to provide reasonable notice of their request, is distinguishable and thus inapplicable here.

The District opposes petitioners' motion and filed a cross-motion for summary decision in which it argues that Azzaro is not distinguishable and thus petitioners are ineligible for indemnification because they did not provide timely notice to the District of their intention to seek defense costs.

PROCEDURAL HISTORY

Petitioners filed their petition with the Commissioner on January 25, 2023. On February 17, 2023, respondent filed a motion to dismiss in lieu of an answer. The matter was transmitted to the Office of Administrative Law (OAL) on February 23, 2023. The motion to dismiss was denied on May 16, 2023. Orders of Inactivity were issued on October 17, 2023, and April 24, 2024, pending the disposition of Azzaro, because the issue presented in that case was substantially similar to the issue presented here. The Order of Inactivity was lifted after the Supreme Court denied certification of the Appellate Division's decision in Azzaro. Petitioners filed their motion for summary decision on January 31, 2025; respondent filed its opposition to the motion and a cross-motion for summary decision on February 3, 2025. The record for the motion closed on February 3, 2025.

FACTUAL DISCUSSION

The following facts are undisputed.

Petitioner Jennifer Rome was employed by the District from September 1, 2004, through December 31, 2017. On January 27, 2017, the District filed tenure charges against Rome, alleging inefficiency, conduct unbecoming a teacher and other just cause. The tenure charges were resolved via a global settlement agreement (Agreement) that the parties signed on March 27, 2017. In conjunction with the Agreement, Rome resigned from her position with the District, effective December 31, 2017.

On or about November 1, 2017, the SBE issued an OSC to Rome, directing her to show cause why her teaching certificates should not be suspended or revoked. Honorable Sarah G. Crowley, ALJ, heard the matter and issued an initial decision finding that the SBE failed to demonstrate inefficiency, insubordination, falsification of records, misrepresentation of her qualification or conduct unbecoming by a preponderance of the credible evidence and dismissed the OSC. On December 9, 2022, the Commissioner adopted the administrative law judge's (ALJ's) decision to dismiss the OSC. In re the Teaching Certificates of Jennifer Rome, EDE 04037-18, Initial Decision (August 4, 2022), <https://njlaw.rutgers.edu/collections/oal/>, adopted, Comm'r (December 9, 2022), <https://www.nj.gov/education/legal/commissioner/index.shtml>. Rome was represented by law firm Mellk Cridge, a petitioner in this matter, for the OSC matter.

On January 25, 2023, Rome and Mellk Cridge filed their petition for indemnification from the District for the reasonable costs and attorney's fees incurred in the defense of the OSC, pursuant to N.J.S.A. 18A:16-6. Rome and Mellk Cridge did not notify the District that they wanted it to pay the costs of the defense of the OSC until they filed their petition for indemnification.

Parties' Arguments

The parties agree that summary decision is appropriate because the material facts are not in dispute. The District argues that, pursuant to Azzaro, the petition must be

dismissed because petitioners did not advise the District, within a reasonable period of time after the OSC was filed, that they wanted it to pay the costs of their defense of the OSC. They are subject to this requirement even if they believed that there is a conflict of interest between Rome and the District.

Petitioners assert that they are entitled to indemnification, notwithstanding their failure to notify the District, because the facts here are distinguishable from those in Azzaro. Unlike in Azzaro, there was an “adversarial relationship” between Rome and the District. Pet’r’s Br. at 7. That is, the OSC “was premised entirely and exclusively upon tenure charges” that the District filed. Ibid. In filing the charges, the District announced that it determined that Rome engaged in conduct outside the scope of her duties. Thus, the District here was Rome’s “accuser” and could not simultaneously serve as her “defender” or “play any role in arranging for her defense.” Id. at 8. Also, the settlement agreement with Rome “contemplated that the District would provide information” about her to the Examiners and “the referral of the District’s tenure charges to the Examiners was required by” N.J.A.C. 6A:3-5.6. Id. at 7. Thus, the “District could not have ethically provided Ms. Rome with a defense to the OSC, under any circumstances” until after the OSC was dismissed. Id. at 7–8, 10.

LEGAL ANALYSIS AND CONCLUSION

Standard of Review

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

Indemnification

“Under the civil indemnification statute, N.J.S.A. 18A:16-6, a board of education employee may be indemnified for attorney’s fees and costs incurred defending civil actions arising out of an act or omission that took place in the course and scope of employment duties.” L.A. v. Bd. of Educ., City of Trenton, Mercer Cnty., 221 N.J. 192, 201–02 (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. Board of Education, 149 N.J. 416 (1997), the Supreme Court addressed the statutory prerequisite. It held that the statute requires “mere proof by a preponderance of the evidence that the act on which the charges are predicated arose out of and in the course of performance of the duties of employment.” Id. at 434; see also Waters v. Bd. of Educ. of Toms River, 2011 N.J. Super. Unpub. LEXIS 3083, *12

(December 22, 2011)¹ (“In the context of the defense of a civil action, the outcome of the litigation is irrelevant, the statute protects both successful and unsuccessful litigants as long as” the cause of action arose out of the performance of the employee’s duties and occurred in the performance of the duties) (citing Lonky v. Bd. of Educ. of Bayonne, EDU 07205-07, final decision (July 7, 2008), <https://njlaw.rutgers.edu/collections/oal/>). In Lonky, the ALJ observed that, because N.J.S.A. 18A:16-6 does not require a disposition in favor of the employee, “there is an entitlement to indemnification if the sole criteria for satisfying the statute has been met by showing that the employee was performing the job she was hired for when the act occurred.” Lonky, EDU 07205-07, initial decision (May 22, 2008), <https://njlaw.rutgers.edu/collections/oal/>.

Azzaro held that employees seeking indemnification pursuant to N.J.S.A. 18A:16-6 must provide the district reasonable notice after the initiation of the proceeding for which representation is sought. “What constitutes a reasonable time may be a fact-specific inquiry in certain cases.” 477 N.J. Super. at 443. Petitioners argue that they could not have notified the District prior to the dismissal of the OSC due to the potential conflict of interest between Rome and the District. However, Azzaro rejected the argument that a potential conflict of interest prevented this notice, concluding that “if there was in fact a conflict, the Board could have assigned outside counsel or ‘come to an agreement with counsel of [petitioner’s] choosing. . . and the costs thereof.’” Id. at 442 (App. Div. 2023) (quoting Edison v. Mezzacca, N.J. Super. 9, 16 (App. Div. 1977)). Moreover, Azzaro held that the notice requirement was not obviated by the prospect that a school district might reject the request to provide defense costs based upon its determination that the actions that were the subject of the underlying matter were not related to the employee’s job duties.

Despite the Board’s arguments here that there was no indication it would have declined to provide defense costs, we are mindful the Board could have determined the allegations against Azzaro were outside the scope of her employment. However, the fact that the Board may have declined petitioner’s request for defense costs is not a basis to refrain from requesting defense and indemnification under N.J.S.A.

¹ Unpublished Appellate Division and administrative decisions are not precedential. They are referenced here because they provide relevant guidance.

18A:16-6. To the extent the Board would have denied Azzaro's request for defense costs, she was not without a remedy. Petitioners would be entitled to challenge such a determination similar to the parties in L.A.^[2]

An evidentiary hearing may have been required, or an adjudication of the underlying OSC, to determine if Azzaro was acting within the scope of her employment to resolve the issue. Nevertheless, unlike N.J.S.A. 18A:16-6.1, which requires an employee to wait until the dismissal of a criminal action to seek reimbursement of legal fees, N.J.S.A. 18A:16-6 has no such requirement. Petitioners were obligated to request the Board to provide defense costs even if the request may have initially been rejected. Although a board may initially deny defense costs, the board will ultimately be responsible for reasonable legal fees if it is later determined the employee was, in fact, working within the scope of their employment.

[Id. at 441.]

While petitioners argue that Azzaro is distinguishable because there was an adversarial relationship and conflict of interest between Rome and the District, Azzaro rejected this type of argument. Rather, it directed employees not to predetermine the outcome and allow a school district to decide how it will act in response to a request for the provision of defense costs.

Moreover, in a case with facts similar to those presented here, Lawless v. Board of Education of Bridgeton, Cumberland County, 2024 N.J. AGEN LEXIS 805, adopted, Comm'r, 2024 N.J. AGEN LEXIS 757 (September 30, 2024), the Commissioner found that a five-year delay in providing notice was unreasonable. The school board served the school employee with tenure charges in September 2017. The board did not certify the charges, as the parties reached an agreement that the employee would resign. The board thus did not vote on the tenure charges and accepted the employee's resignation. On September 21, 2018, the SBE, "on its own initiative," issued an OSC seeking to revoke the employee's teaching certificates. 2024 N.J. AGEN LEXIS 805 at *12. The OSC was based on the tenure charges. The employee retained counsel to defend against the OSC

² Where a hearing was required to determine whether the school employee's actions fell within the scope of his employment duties. L.A., 221 N.J. at 204–05.

and counsel represented him from October 1, 2018, through June 30, 2023. On June 29, 2023, the SBE voted to vacate the OSC. The employee filed a petition seeking indemnification on October 13, 2023. He did not notify the board of his intention to seek indemnification for his legal fees and costs associated with his defense of the OSC prior to then. Noting that the employee did not offer an explanation of the delay other than the same legal arguments that were rejected by Azzaro, the ALJ found, and the Commissioner agreed, that it was unreasonable for him to have waited five years to notify the board of his intention to seek indemnification.

For these reasons, I **CONCLUDE** that petitioners have not demonstrated that their five year delay was reasonable and, therefore, they are not entitled to the relief they seek from the District.

ORDER

I **ORDER** that respondent's cross-motion for summary decision is **GRANTED** and petitioners' cross-motion for summary decision is **DENIED**.

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 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.

March 18, 2025

DATE


JUDITH LIEBERMAN, ALJ

Date Received at Agency:

March 18, 2025

Date Mailed to Parties:

JL/mg

c: Clerk OAL-T

APPENDIX

For petitioners:

Brief in support of motion for summary decision, December 16, 2024

P-A Verified Petition for Indemnification, January 25, 2023

For respondent:

Brief in opposition to motion for summary decision and in support of cross-motion for summary decision, February 4, 2025

R-A Motion to Dismiss, February 17, 2023, with exhibits:

R-1 Tenure Charges, January 27, 2017

R-2 Superior Court complaints

R-3 Settlement Agreement and General Release

R-4 Transcript of settlement proceedings