

57-25E
OAL Dkt. No. 17815-24
Agency Dkt. No. 397-12/24

New Jersey Commissioner of Education
Order on Emergent Relief

A'Dorian Murray-Thomas,

Petitioner,

v.

Board of Education of the City of Newark, Essex
County, Roger Leon, and Brenda Liss,

Respondents.

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, A'Dorian Murray-Thomas, 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. 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.

On November 26, 2024, the Board rescinded a prior resolution authorizing its payment of petitioner's counsel fees. The Board contends that it is no longer obligated to pay petitioner's legal fees because petitioner, in her defense against the underlying ethics complaint, took a

position adverse to the Board's legal interests when she subpoenaed a third party to secure a report that the Board had previously classified as "privileged."

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 in part. The ALJ reinstated the original resolution authorizing payment of petitioner's counsel fees on a monthly basis but instructed petitioner's counsel to carve out of her bill the portion relating to the subpoena and the report, reasoning that additional evidence and testimony is required to resolve this particular issue.

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.

Here, petitioner is not entitled to emergent relief because the legal right underlying her claim is not settled. While the ALJ indicated that "petitioner was acting under the purview of her sworn duties," Order at 6, that fact has not yet been established. Further proceedings are required to determine whether petitioner's conduct in the underlying ethics matter arose out of and in the course of her duties as a board member. As of the oral argument on January 2, 2025, the parties were in the midst of discovery exchange and motion practice relative to discovery. The facts have yet to be developed, and additional facts will likely emerge as discovery proceeds.

Moreover, well-settled 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

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.

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.

Accordingly, petitioner's request for emergent relief is denied.² 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.



ACTING COMMISSIONER OF EDUCATION

Date of Decision: February 24, 2025
Date of Mailing: February 24, 2025

² Because all *Crowe* factors must be satisfied to obtain emergent relief, the Commissioner need not analyze the remaining three factors.



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

**ORDER GRANTING PARTIAL
EMERGENCY RELIEF**

OAL DKT. NO. EDU 17815-24

AGENCY DKT. NO. 397/12-24

A'DORIAN MURRAY-THOMAS,

Petitioner,

v.

**BOARD OF EDUCATION OF THE
CITY OF NEWARK, ROGER LEON
AND BRENDA LISS**

Respondents.

Janelle Edwards-Stewart, Esq., for petitioner, A'Dorian Murray-Thomas
(Porzio, Bromberg and Newman, attorneys)

Lester Taylor, Esq., and **Jeremy Washington, Esq.** for respondents
(Taylor Law Group, LLC, attorneys)

BEFORE **ANDREW M. BARON**, ALJ:

STATEMENT OF THE CASE

Petitioner, A'Dorian Murray-Thomas brings this action for emergent relief seeking, among other things an Order directing the Newark Board of Education to reinstate a prior resolution for the payment of counsel fees for representation in a School Ethics matter

which was brought against her while serving as a member of the Newark Board of Education.

On November 24, 2024, the District rescinded the original resolution unilaterally and ceased payment for her counsel fees without notice to petitioner. The district contends that it is no longer obligated to pay for her legal services in the manner originally agreed upon since petitioner took unilateral legal action against the district in the form of a disputed subpoena seeking a confidential document without notice to the district. Thus, the District contends that petitioner created another legal issue outside the scope of the originally agreed upon representation which is adverse to the District's interests.

Not fully before me yet but still pending is a Cross-Motion to Dismiss the petition brought by the district, as well as a Motion to Consolidate a second emergent application brought by another member of the Board of Education.

The Department of Education transmitted the case to the Office of Administrative Law (OAL) under the Administrative Procedure Act, N.J.S.A. 52:14B-1 to -15, and the Act establishing the office, N.J.S.A. 52:14F-1 to -23, for a hearing under the Uniform Administrative Procedure Rules, N.J.A.C. 1:1-1.1 to -21.6, and the rules of procedure established by the Department of Education to hear and decide controversies and disputes arising under school laws, N.J.A.C. 6A:3-1.1 to -1.17. Jurisdiction is conferred under N.J.S.A. 18A:6-9. The case was filed at the Office of Administrative Law (OAL) on May 24, 2024.

My jurisdiction at this stage of the proceedings is to determine whether or not petitioner has met her burden under the four prongs of Crowe v. DeGioia, 90 N.J. 126 (1982), that would justify granting emergent relief.

Following an informal conference on December 23rd, oral argument was initially heard on January 2nd, 2024. Both sides filed supplemental submissions subsequent to argument.

FACTUAL DISCUSSION

This matter arises out of a request for legal representation and indemnification for counsel fees in connection with an ethics complaint brought against petitioner by a Newark Board of Education employee, Nelson Ruiz who serves as principal of the Newark School of Global Studies.

The complaint, which is the subject of a separate proceeding before another Administrative Law Judge was allegedly brought by principal Ruiz in connection with efforts made by petitioner to investigate allegations of bias and harassment at the School of Global Studies. Although the same criteria for seeking counsel fees from the district would apply if a member of the public brought the complaint, I **FIND** it even more compelling here, since the complaint was brought by a District employee.

Seeking to exercise her legal right to reimbursement/indemnification for counsel fees incurred in connection with the ethics complaint, petitioner through her present counsel approached the District and the Board. After some negotiation, the Board agreed to pay the reduced rate of \$285.00 an hour for the services of the Porzio Bromberg law firm which had been retained by petitioner to defend her interests in the School Ethics proceeding.

Shortly thereafter, the Board introduced and approved a resolution approving the retention of the Porzio Bromberg firm at the agreed upon hourly rate of \$285.00 an hour.

It is undisputed and I **FIND** that the resolution did not include any conditions or limitations connected to the representation, nor did it contain the traditional “not to exceed a certain amount language” which most similar resolutions approved by public entities have in order to make sure that taxpayers are not being over-billed for legal services.

During this time, and continuously, from February 2023 through November 26, 2024 petitioner was and is being represented by Janelle Edwards-Stewart of the Porzio

Bromberg law firm. During this time, respondent paid petitioner's counsel's law firm over \$21,000 for legal services through August 2024.

Somewhere along the line following the August 2024 payment, the district learned that in connection with petitioner's defense against the 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.

Nonetheless, finding itself in an adverse legal position to the interests of the petitioner, and with a growing legal bill not contemplated when the original resolution was approved, on November 24, 2024, the District rescinded the original resolution and terminated its agreement with petitioner and her counsel.

At the time the resolution authorizing the payment of counsel fees was rescinded, petitioner had accrued an additional \$20,000 in outstanding legal fees, which as of the filing of the emergency application, remain unpaid.

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.S.A. 6A:3-1.6(b)

The seminal issue in the case before me is whether or not petitioner is entitled to emergent relief concerning an action by the Newark Board of Education and co-respondents, Leon and Liss regarding the unilateral rescission by resolution of an agreement to pay for petitioner's reasonable counsel fees in defending against an ethics complaint brought against her by a District employee.

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.

Pursuant to this law, 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 defense of its action rescinding the prior resolution, the Newark Board of Education argues that its actions were distinguished from the facts in Castriota v. Roxbury 427 N.J. Super 592 (App. Div. 2012), in that the rescission of the prior resolution paying for counsel fees was not done in a legal forum. Nonetheless, that case also refers to a public entity acting in a "quasi-judicial" forum similar to the circumstances here, where the Board, without notice to petitioner, acted as judge and jury in unilaterally terminating its agreement to pay for legal services in an action that had been brought against the petitioner by an employee of the Board, (in this case the principal of a school which the board member was looking into complaints by members of the public and staff associated with the principal's school).

In doing so, petitioner was acting under the purview of her sworn duties, thus for purposes of this proceeding, other than the separate legal dispute over the subpoena the appropriateness of which will be determined at a later time, the public policy of this State not only says she is entitled to have her "reasonable" fees covered which the board had already negotiated and agreed upon, but the statute uses the word, **shall be covered**. (Emphasis added).

DISCUSSION AND CONCLUSIONS OF LAW

In petitioner's initial emergent basis statement, petitioner contends that emergent relief is required because:

Petitioner says she will suffer irreparable harm if the requested relief is not granted since it would jeopardize her ability to put on a proper defense to the ethics complaint filed against her by a District employee, and that preventing her from doing so would damage her reputation in the public domain since she now sits in a higher elective position representing the entire residents of Essex County, not just Newark residents.

Respondent's opposition to the emergent application states essentially that petitioner has not met the criteria for emergent relief, including but not limited to the argument that at this stage there is no irreparable harm, and the equities do not balance in petitioner's favor at this stage of the proceedings. Respondent further states that even if there is some merit to petitioner's contentions, since there are so many facts in dispute, the matter cannot be decided without a full plenary hearing on the merits. Respondent further contends that the actions of petitioner and her counsel now put them in an adverse legal position to the District which is paying for her counsel fees, while also being compelled to protect its interest in keeping a document confidential.

In order to prevail on an application for emergent relief, a petitioner must meet all four conjunctive prongs set forth in Crowe. Since, petitioner has established irreparable harm, as well as the likelihood of success on the merits, she is entitled to emergent relief. 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.

I further **CONCLUDE** that while I have concerns about the manner in which petitioner and her counsel sought to obtain the confidential document to support her defense in the ethics case, the application for emergent relief should be **GRANTED in PART**, as it relates to reinstating the original resolution awarding petitioner counsel fees, since the District unilaterally and in an arbitrary and capricious manner without notice or due process to petitioner rescinded the prior resolution memorializing an agreement to pay petitioner's counsel fees to defend against the ethics complaint which was brought against her by a District employee.

With that said, **I FURTHER CONCLUDE** that it is only appropriate at this time to return petitioner to the original status quo, being reasonable counsel fees at \$285.00 to defend her interests against the original ethics charge. However, without testimony and additional evidence and information, **I AM UNABLE TO CONCLUDE** that the subpoena and corresponding litigation related to it is also covered by the umbrella of the original resolution, especially when there may have been other less costly means to obtain the document in dispute for use in the ethics case.

While the District may have “unclean hands” by virtual of its unilateral action terminating the agreement for counsel fees, to some extent the petitioner and her counsel themselves also have “unclean hands” by virtue of their own unilateral action sending a subpoena out to a District consultant for a document they knew had already been classified as confidential and when there may have been other less costly means to obtain it.

Clearly, when the District agreed to pay petitioner’s reasonable counsel fees, they did not contemplate paying additional fees for a separate action which would permit petitioner to obtain a confidential document it had retained an outside consultant to prepare.

Accordingly, while I **CONCLUDE** that petitioner would suffer irreparable harm if the original agreement was not reinstated, and petitioner would likely succeed on the merits, the equities are balanced in her favor and the law on the subject is well-settled, **I ONLY CONCLUDE** that this determination applies to the original agreement for representation. For the time being, petitioner’s counsel will have to “carve out of her bill” that portion that pertains to the subpoena and the dispute over the document, the justification for which can be decided at a later time.

I **CONCLUDE** that without testimony and additional evidence and information concerning whether petitioner’s actions seeking to secure the confidential document were appropriate, the legal dispute over the document and the corresponding fees related to it should be dealt with at a later time.

ORDER

It is hereby **ORDERED** that the petitioner's application for emergent relief is **GRANTED IN PART AT THIS TIME AS IT PERTAINS 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.**

I HEREBY ORDER THE ORIGINAL AGREEMENT IS REINSTATED AND FOR THE REASONS SET FORTH HEREIN, THE NOVEMBER 24, 2024 RESOLUTION RESCINDING THE AGREEMENT IS DEEMED NULL AND VOID.

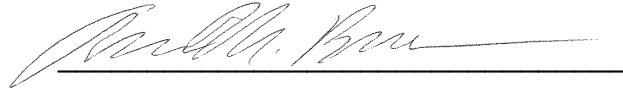
I RETAIN JURISDICTION AND FURTHER ORDER, that the remainder of the case, including but not limited to further disputes over the continuing obligation to pay for petitioner's counsel fees shall be subject to a full plenary hearing over the entire matter, including whether or not the fees related to the subpoena for a confidential document which might have been secured in alternate ways are appropriate, and/or whether or not that portion of the primary ethics case which the District says puts it and petitioner in an adverse situation outside the scope of N.J.S.A.18A:12-20.

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.

The next telephone status conference in this matter shall be held on March 6, 2025 at 3:30 PM.

January 8, 2025

DATE

A handwritten signature in cursive script, appearing to read "Andrew M. Baron", written over a horizontal line.

ANDREW M. BARON, ALJ

Date Received at Agency

January 8, 2025

Date E-Mailed to Parties:
sej

January 8, 2025