

**MATTHEWS v. BOARD OF EDUCATION OF UNION COUNTY VOCATIONAL TECHNICAL SCHOOL
No. A-1181-12T3.**

**ARTHUR MATTHEWS and THE HORACE MANN INSURANCE COMPANY, Petitioners-Respondents, v.
BOARD OF EDUCATION OF THE UNION COUNTY VOCATIONAL TECHNICAL SCHOOL, Respondent-
Appellant.**

Superior Court of New Jersey, Appellate Division.

Decided August 6, 2014.

**John J. Hoffman, Acting Attorney General, attorney for respondent Commissioner of Education
(Lauren A. Jensen, Deputy Attorney General, on the brief).**

Before Judges Fisher, Espinosa and Koblitz.

PER CURIAM.

The Commissioner of the Department of Education (Commissioner) granted summary decision to Arthur Matthews and the Horace Mann Insurance Company (Horace Mann, collectively, petitioners), requiring Union County Vocational Technical School Board of Education (the Board) to reimburse petitioners for defense and indemnification costs incurred to defend a suit filed by a student of Matthews pursuant to N.J.S.A. 18A:16-6. The Board appeals from that final administrative agency decision. For the reasons that follow, we affirm.

The disposition of this defense and indemnification issue is governed by N.J.S.A. 18A:16-6, which states in pertinent part:

Whenever any civil proceeding has been or shall be brought against any person holding any office, position or employment under the jurisdiction of any board of education for any act or omission arising out of and in the course of the performance of the duties of such employment 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

In her complaint against Matthews and the Board,¹ S.F. alleged that she was a student at "Union County VoTech School" when Matthews, a teacher, assaulted her on school premises. According to S.F., "Matthews pulled her arm, yanked her out of her seat and then grabbed her neck." The Director of Special Education interviewed students and reported their conflicting reports to the Superintendent of Schools in a memo. One student, T.C., stated, "Mr. Matthews was yelling and grabbed her by the throat." A second student, J.G., stated at first, "Mr. Matthews got tired of them not listening. He grabbed her by the hand and neck." J.G. then modified his account to say, "Mr. Matthews grabbed her by the shirt. He did not put his hand around her throat. S.F. picked up a broom handle and went after Mr. Matthews." J.G. stated further that he and another student took the broom handle from S.F. A third student said, "None of that happened. Mr. Matthews did not grab anyone." Other students reported they saw nothing. Matthews denied assaulting S.F.

Matthews sought a defense and indemnification from the Board's insurer, Zurich American Insurance Company (Zurich). Zurich declined on the ground that the complaint alleged an intentional act, for which there was no coverage under the Board's policy. Following Zurich's denial of coverage, a defense was provided for Matthews by Horace Mann pursuant to a liability policy issued to the New Jersey Education Association, Matthews's union.

The lawsuit was settled, without any admission of liability, for \$10,000. By letter dated November 18, 2009, Matthews's attorney, Arnold M. Mellk, wrote to the Board, advising of the settlement and noting, "There has never been any adjudication, civil, criminal, or administrative, that [Matthews] undertook any of the actions alleged in the Complaint." Mellk requested payment, pursuant to N.J.S.A. 18A:16-6, of \$19,460.73 in costs and fees incurred for the defense and settlement of the underlying lawsuit.

The Board declined, stating that because the allegation was of a willful and malicious assault, it did not involve an act or omission that arose out of and was in the course of Matthews's performance of his duties. Matthews and Horace Mann then filed a verified petition with the Commissioner in January 2010, again seeking reimbursement from the Board for the defense and settlement of the civil suit against Matthews.

The case was assigned to the Office of Administrative Law (OAL) in March 2010. The parties entered into a stipulation of facts that included the following:

3. The Lawsuit alleged that, on or about February 27, 2006, plaintiff [S.F.], a student at the Union County Vocational Technical School, was assaulted by Petitioner Matthews, a teacher at the School, while both were present in the School during school hours. . . . 12. There was never any civil or criminal adjudication or admission by Petitioner Matthews, that he assaulted or otherwise harmed [S.F.]. [S.F.]'s allegations were never submitted to a trier of fact and the case settled without an admission of liability or wrongdoing by Mr. Matthews. 13. All of the costs and fees sought by Petitioners herein were expended by the Horace Mann Insurance Company.

All parties moved for summary decision in October 2011. The Administrative Law Judge (ALJ) found there were outstanding genuine issues of material fact, in part because "petitioners have not specifically denied S.F.'s version of events," and denied summary decision as to all parties. Petitioners requested interlocutory review from the Commissioner.

The Commissioner found that the ALJ's decision was based upon an understanding of the law that was incorrect. He noted that Matthews had denied the allegation in his answer to the complaint and that no adjudication was necessary for petitioners to establish their entitlement to indemnification. The Commissioner stated that entitlement to reimbursement under N.J.S.A. 18A:16-6 required petitioners to satisfy only the two criteria set forth in the statute, that is, "the conduct triggering the legal action against Mr. Matthews must have 1) arisen out of the performance of the individual's duties, and 2) occurred in the course of performing those duties."

The Commissioner stated further, "The outcome of the civil litigation addressed by this statute is irrelevant; both successful and unsuccessful litigants are protected as long as the above two criteria are satisfied." He stated, "petitioners are entitled, per se, to reimbursement here. Their entitlement is in no way conditioned on a relitigation which exonerates petitioner Matthews of the allegations against him." Citing the stipulations agreed upon by the parties, the Commissioner concluded that the two criteria for reimbursement were satisfied here. He set aside the ALJ's order and granted summary decision to petitioners.

In this appeal, the Board argues that Matthews is not entitled to reimbursement because the provisions of N.J.S.A. 18A:16-6 do not apply to allegations of assault. We disagree.

Courts afford an agency "great deference" in reviewing its "interpretation of statutes within its scope of authority and its adoption of rules implementing" the laws for which it is responsible. *N.J. Soc'y for the Prevention of Cruelty to Animals v. N.J. Dep't of Agric.*, [196 N.J. 366](#), 385 (2008) (citing *In re Freshwater Wetlands Prot. Act Rules*, [180 N.J. 478](#), 489 (2004)). That approach reflects the specialized expertise agencies possess to enact technical regulations and evaluate issues that rulemaking invites. *N.J. League of Municipalities v. Dep't of Cmty. Affairs*, [158 N.J. 211](#), 222 (1999). However, "[courts] are in no way bound by the agency's interpretation of a statute or its determination of a strictly legal issue." *Norfolk S. Ry. Co. v. Intermodal Props., LLC*, [215 N.J. 142](#), 165 (2013) (citations and internal quotation marks omitted).

"[T]he Commissioner of Education has primary jurisdiction to hear and determine all controversies arising under the school laws." *Bower v. Bd. of Educ. of E. Orange*, [149 N.J. 416](#), 420 (1997). As a result, his "statutory interpretation is entitled to considerable weight, where not inconsistent with the statute and in harmony with the statutory purpose." *Kletzkin v. Bd. of Educ. of Spotswood*, [136 N.J. 275](#), 278 (1994). We will ordinarily uphold the Commissioner's determination unless it is "arbitrary, capricious, or unreasonable or is not supported by substantial credible evidence in the record as a whole." *G.D.M. v. Bd. of Educ. of the Ramapo Indian Hills Reg'l High Sch. Dist.*, [427 N.J. Super. 246](#), 259 (App. Div. 2012) (quoting *Denney v. Bd. of Educ. of Passaic Cnty. Reg'l High Sch. Dist. # 1*, [131 N.J. 626](#), 641 (1993)), cert. denied, 213 N.J. 568 (2013).

At issue here is whether the mere allegation that an assault occurred takes Matthews' conduct outside the scope of actions covered by N.J.S.A. 18A:16-6. As we have noted, the allegation was denied by Matthews, the subject of conflicting statements by students, and neither proven nor adjudicated.

The Commissioner interpreted N.J.S.A. 18A:16-6 to establish only two criteria for the Board to become obligated to provide a defense and indemnification to Matthews: "the conduct triggering the legal action against Mr. Matthews must have 1) arisen out of the performance of the individual's duties, and 2) occurred in the course of performing those duties." The Commissioner rejected the argument that Matthews had to be exonerated in order to receive the benefits of the statute. This interpretation is consistent with the plain language of the statute, which contains no language that conditions indemnity upon the outcome of the civil action.

In this regard, N.J.S.A. 18A:16-6 stands in contrast to N.J.S.A. 18A:16-6.1, which requires a board of education to reimburse defense costs to an employee in certain criminal actions. The statute provides:

Should any criminal or quasi-criminal action be instituted against any such person for any such act or omission² 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. [N.J.S.A. 18A:16-6.1 (emphasis added).]

See also Bd. of Educ. v. Utica Mut. Ins. Co., [172 N.J. 300](#), 304 (2002); Meeker Sharkey Assocs., Inc. v. Nat'l Union Fire Ins. Co., [208 N.J. Super. 354](#), 358 (App. Div.) (holding that under N.J.S.A. 18A:16-6.1, the triggering event for insurance coverage is an acquittal or final disposition in favor of the employee), certif. denied, [104 N.J. 415](#) (1986).

In arguing that an "assault" cannot "arise[] out of and in the course of the performance of" Matthews's duties as a teacher, the Board equates an allegation with a fact and superimposes a condition — that the "fact" be disproven — upon those established by the Legislature. This argument is not supported by the language of N.J.S.A. 18A:16-6.

Even within the context of a criminal action, which does condition reimbursement upon a favorable disposition, indemnification will not be denied merely because the charged conduct, if committed, could not have been within the scope of the teacher's lawful duties. See Bower, supra, 149 N.J. at 431-33. The Court stated,

Read literally, the statute prescribes the standards for a civil claim for indemnification, and thus 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. There being proof of no underlying act other than Bower's presence in the school and performance of his classroom duties, the indictment and its dismissal—unrebutted by any other evidence—clearly satisfy Bower's burden of proof under the statute. [Id. at 434.]

Similarly, in this case, the complaint against Matthews alleging assault was dismissed as part of a settlement that included no admission of wrongdoing. As the Commissioner noted, the Board stipulated to facts that satisfied the criteria established by N.J.S.A. 18A:16-6. We therefore agree with his conclusion that petitioners were entitled to summary decision in their favor.

The Board also argues that the Commissioner's decision violates the legislative policy of the New Jersey Tort Claims Act barring subrogation claims against a public entity; that Horace Mann may not seek relief under N.J.S.A. 18A:16-6; and that the claims for reimbursement are barred by the entire controversy doctrine and res judicata. After carefully considering the record and briefs, we are satisfied that these arguments lack sufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(1)(E).

Affirmed.

FootNotes

1. Summary judgment was later entered, dismissing the complaint against the Board.
2. In , , 149 at 423, the Supreme Court noted that "such act or omission" "means any act or omission `arising out of and in the course of the duties of such office' pursuant to 18A:16-6."