

LOGAN ALEXANDER AND THE HORACE :
MANN INSURANCE COMPANY,

PETITIONERS,

V.

COMMISSIONER OF EDUCATION

BOARD OF EDUCATION OF THE :
CITY OF TRENTON, MERCER COUNTY,

DECISION

RESPONDENT.

SYNOPSIS

Petitioner Logan Alexander initially sought a defense and indemnification from the Board under *N.J.S.A. 18A:16-6* when he was named in a civil lawsuit in Superior Court brought by a former student who alleged that petitioner Alexander, while employed as a security guard by the Trenton Public Schools, committed an act of sexual contact against the student. Respondent Board did not provide petitioner Alexander with legal representation, but the Horace Mann Insurance Company (Company) provided defense counsel for Alexander pursuant to an employment liability insurance policy. The parties to the lawsuit subsequently entered into a settlement agreement which was approved by the Court with no admissions of any wrongdoing. In the instant matter, petitioners sought reimbursement from the respondent Board for costs incurred in defending petitioner Alexander. The respondent Board contended that the petition should be dismissed because the acts on which the lawsuit was predicated did not arise out of and in the course of the performance of Alexander's employment duties. The parties filed cross motions for summary decision.

The ALJ found, *inter alia*, that: there are no material facts in dispute, and the matter is ripe for summary decision; *N.J.S.A. 18A:16-6* protects eligible employees where the conduct triggering the legal action 1) arose out of the performance of the employee's duties and 2) occurred in the course of performing those duties; in the instant matter, if the alleged conduct identified in the civil suit was substantiated, petitioners would not be entitled to indemnification because the allegation of sexual touching a minor student is clearly not in the petitioner's job description; however, the case against petitioner Alexander was settled without admission or adjudication of the alleged facts; and under New Jersey Supreme Court precedents, a school employee against whom alleged claims have never been substantiated is entitled to indemnification for costs of defending a civil suit. Accordingly, the ALJ granted petitioners' motion for summary decision and granted petitioner's request for relief.

Upon a thorough and independent review, the Commissioner was compelled to agree with the ALJ that summary decision is appropriately granted to petitioners, as their indemnification from the Board in this matter is mandated as a matter of law. Accordingly, the Commissioner adopted the Initial Decision as the final decision in this matter and directed the Board to compensate the petitioners for the reasonable legal fees and costs of defense of the civil suit against petitioner Alexander.

This synopsis is not part of the Commissioner's decision. It has been prepared for the convenience of the reader. It has been neither reviewed nor approved by the Commissioner.
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April 27, 2012

OAL DKT. NO. EDU 10410-11
AGENCY DKT. NO. 225-8/11

LOGAN ALEXANDER AND THE HORACE	:	
MANN INSURANCE COMPANY,	:	
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V.	:	COMMISSIONER OF EDUCATION
	:	
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	:	
RESPONDENT.	:	

The record of this matter and the Initial Decision of the Office of Administrative Law (OAL) have been reviewed. The parties did not file exceptions to the Initial Decision.

Upon full review and consideration, the Commissioner is compelled to agree with the Administrative Law Judge (ALJ) that summary decision is appropriately granted to petitioners as their indemnification from the Board in this matter is mandated as a matter of law.

Petitioners are seeking reimbursement for costs and fees expended in the defense and settlement of a civil lawsuit alleging that petitioner Alexander engaged in wrongful conduct against minor child, K.O., while employed as a security guard by the Trenton Board of Education. A school employee's entitlement to reimbursement for his legal fees and costs in connection with the defense of a civil matter is specifically controlled by *N.J.S.A. 18A:16-6* which – in pertinent part – specifies:

Whenever any civil or administrative action or other legal proceeding has been or shall be brought against any person holding any...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.

By its very terms, to qualify for the protection afforded under this statute *the conduct triggering the legal action against the individual must have 1) arisen out of the performance of the individual's duties, and 2) occurred in the course of performing those duties.* 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. Here, the civil case against Mr. Alexander was settled without admission or adjudication of the alleged facts; consequently, there is no proof that he engaged in any untoward conduct toward the minor child, K.O. The only undisputed conduct existing in this matter is that the alleged events took place at school, during school hours, while Mr. Alexander was engaged in performing his duties as a security guard. Consequently, the alleged behavior on which the civil suit was predicated *arose out of and in the course of the performance of the duties of Mr. Alexander's employment, (See Bower v. Board of Education of the City of East Orange, 149 N.J. 416 (1977))* thereby satisfying the criteria which entitles petitioners to indemnification pursuant to the terms of *N.J.S.A. 18A:16-6.*

Accordingly, the recommended decision of the OAL is adopted as the final decision in this matter. The Board is hereby directed to compensate the petitioners for the reasonable legal fees and costs of defense of the civil suit on behalf of K.O. against Mr. Alexander.

IT IS SO ORDERED.*

ACTING COMMISSIONER OF EDUCATION

Date of Decision: April 27, 2012

Date of Mailing: April 27, 2012

* This decision may be appealed to the Appellate Division of the Superior Court pursuant to *P.L. 2008, c. 36 (N.J.S.A. 18A:6-9.1).*