

**New Jersey Commissioner of Education**  
**Final Decision**

Robert DiLullo,

Petitioner,

v.

Board of Education of the City of Ocean City,  
Cape May County, and New Jersey Schools  
Insurance Group,

Respondents.

The record of this matter, the Initial Decision of the Office of Administrative Law (OAL), the exceptions filed by petitioner pursuant to *N.J.A.C. 1:1-18.4*, and respondents' reply thereto, have been reviewed and considered.

The threshold procedural issue in this case is whether the petition should be dismissed as untimely pursuant to the 90-day rule, which requires petitions to be filed "no later than the 90<sup>th</sup> day" following notice of the order, ruling, or action being contested. *N.J.A.C. 6A:3-1.3(i)*; *Kaprow v. Bd. of Educ. of Berkeley Twp.*, 131 N.J. 572, 582 (1993). The 90-day limitation period "represents a fair and reasonably-necessary requirement for the proper and efficient resolution of disputes under the school laws." *Kaprow*, 131 N.J. at 582. "While the Commissioner has the discretion to relax the [90-day] rule . . . this extraordinary relief has been reserved only for those situations where a substantial constitutional issue is presented or where a matter of significant

public interest is involved, beyond that of concern only to the parties.” *Smith v. State-Operated Sch. Dist. of City of Paterson*, OAL Dkt. No. EDU 06076-14, Initial Decision at 6 (Nov. 6, 2014), *adopted*, Commissioner Decision No. 491-14 (Dec. 18, 2014).

Petitioner formerly worked as a substitute teacher for the Board. On August 3, 2020, petitioner, through counsel, sought a defense and indemnification from the Board pursuant to *N.J.S.A. 18A:16-6* in a civil lawsuit. On October 6, 2020, New Jersey Schools Insurance Group, the Board’s insurer, denied petitioner’s request. Thereafter, petitioner’s homeowner’s insurer, High Point, commenced proceedings in Superior Court seeking a declaration that it did not owe petitioner a defense or indemnification in the civil lawsuit. Legal counsel provided by High Point filed an answer to the civil lawsuit on petitioner’s behalf and asserted a cross claim for indemnification against the Board. In 2021, the Superior Court consolidated the civil case and the declaratory judgment action. On September 19, 2024, a Superior Court judge ruled that the court lacked jurisdiction over petitioner’s indemnification claim and referred it to the Commissioner of Education.

Thereafter, on January 16, 2025, petitioner filed the instant action. Respondents moved to dismiss the petition as untimely. After the matter was transmitted to the OAL, the parties filed supplemental briefs and participated in oral argument. Ultimately, the Administrative Law Judge (ALJ) treated the motion to dismiss as a motion for summary decision because no material facts were disputed. The ALJ granted respondents’ motion for summary decision upon concluding that the petition was untimely filed. The ALJ reasoned that the petition was neither filed within 90 days of October 6, 2020, nor within 90 days of the Superior Court’s September 19, 2024, order. The ALJ recognized that *N.J.A.C. 6A:3-1.3(f)* places the burden on the parties to ensure that orders

of transfer, pleadings, and other pertinent papers are forwarded to the Commissioner, and found that the record was devoid of evidence that the Superior Court ever took steps to transfer the case to the Commissioner of Education. Furthermore, the ALJ did not conclude that it was appropriate to relax the 90-day filing deadline under the circumstances.

In his exceptions, petitioner argues that: (1) his claims do not arise under school law and are therefore not subject to the 90-day statute of limitations in *N.J.A.C. 6A:3-1.3(i)*; (2) even if the 90-day deadline applies, the petition was timely filed as of the date of the Superior Court's Order of Referral on September 19, 2024; and (3) even if the 90-day deadline applies, it should be relaxed consistent with *N.J.A.C. 6A:3-1.16*. In response, the Board argues that the matter clearly arises under school law, the petition was untimely pursuant to the 90-day rule, and there are no issues of constitutional dimension or public interest that would warrant relaxation of the filing deadline.

Upon review, the Commissioner concurs with the ALJ that the petition must be dismissed pursuant to the 90-day rule because it was not filed within 90 days of the challenged decision. At the outset, petitioner's defense and indemnification claim are made pursuant to *N.J.S.A. 18A:16-6*, a school law. Consequently, the 90-day filing period set forth at *N.J.A.C. 6A:3-1.3(i)* is applicable here. The petition should have been filed within 90 days of the October 6, 2020, denial of petitioner's defense and indemnification request. Petitioner has not alleged that he was unaware of the October 6, 2020, denial. But even if September 19, 2024—the date of the Superior Court's order declining to exercise jurisdiction over the defense and indemnification claim—is utilized to reset the 90-day filing period, petitioner's January 16, 2025, petition is still untimely.

Additionally, the record is devoid of evidence that the Superior Court effectuated a transfer of this matter to the Commissioner of Education effective September 19, 2024, pursuant to *New Jersey Court Rule 1:13-4*; thus, contrary to petitioner's assertion, *Rule 1:13-4* is not applicable. Moreover, petitioner has not offered any compelling reason that would warrant relaxation of the 90-day limitation period, and none can be gleaned from the record. This matter does not present a substantial constitutional issue or an issue of significant public interest; thus, relaxation of the 90-day rule is unwarranted. Finally, to the extent petitioner contests any aspect of the Superior Court's September 19, 2024, ruling, he could have sought relief from the Appellate Division of the Superior Court. *N.J. Ct. R. 2:2-3*.

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

IT IS SO ORDERED.<sup>1</sup>



COMMISSIONER OF EDUCATION

Date of Decision: September 26, 2025

Date of Mailing: September 29, 2025

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<sup>1</sup> 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 04010-25

AGENCY DKT. NO. 7-1/25

**ROBERT DILULLO,**

Petitioner,

v.

**CITY OF OCEAN CITY BOARD OF EDUCATION,**

**CAPE MAY COUNTY AND NEW JERSEY**

**SCHOOLS INSURANCE GROUP,**

Respondent.

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**A. Michael Barker**, Esq., and Greg DiLorenzo, Esq. for petitioner (Barker, Gelfand, James & Sarvas, P.C., attorneys)

**Robert M. Tosti**, Esq., for respondents (Flanagan, Barone, & O'Brien, LLC., attorneys)

Record Closed: July 2, 2025

Decided: July 24, 2025

BEFORE **CATHERINE A. TUOHY**, ALJ:

**STATEMENT OF THE CASE**

Petitioner, Robert DiLullo, seeks reimbursement of counsel fees and costs against respondents, City of Ocean City Board of Education (Board) and New Jersey Schools

Insurance Group (NJSIG) associated with the defense of a civil lawsuit filed against him arising out of his employment as a substitute teacher at the Ocean City High School during the 2006-2007 school year pursuant to N.J.S.A. 18A:16-6.

### **PROCEDURAL HISTORY**

The underlying consolidated cases giving rise to the instant petition were pending in Cape May Superior Court before the Honorable James H. Pickering Jr., J.S.C. under the consolidated docket CPM-L-95-20. By Order, dated September 19, 2024, Judge Pickering concluded that the court did not have jurisdiction of this matter and that jurisdiction rested with the Commissioner of Education. Judge Pickering's September 19, 2024, order stated: "This matter is referred to the Commissioner of Education".

On January 16, 2025, petitioner then filed with the Commissioner of Education, a Verified Petition for Legal Defense Costs pursuant to N.J.S.A. 18A:16-6, dated January 7, 2025. Respondent filed a motion to dismiss in lieu of an answer, supporting brief and certification of counsel dated February 27, 2025, seeking to dismiss the petition as untimely pursuant to N.J.A.C. 6A:3-1.3(i).

The matter was transmitted by the Department of Education Office of Controversies and Disputes to the Office of Administrative Law (OAL) as a contested case, where it was filed on March 4, 2025, pursuant to N.J.S.A. 52:14B-1 to 15; N.J.S.A. 52:14F-1 to 13.

Petitioner filed a brief in opposition to the motion to dismiss with Exhibits 1 through 3. Respondent filed a Reply Brief dated March 19, 2025, received by the undersigned April 24, 2025. Respondent filed a supplemental letter brief on April 30, 2025. Petitioner filed a letter brief, dated June 2, 2025, in response to respondent's supplemental letter brief.

Oral argument was conducted on July 2, 2025, and the motion record closed at that time.

## **FACTUAL DISCUSSIONS AND FINDINGS**

### **Respondents argument**

Respondents argue that they are entitled to summary decision as the petition was filed more than ninety days after Judge Pickering's September 19, 2024, ruling, contrary to the statute of limitations set forth in N.J.A.C. 6A:3-1.3(i). Respondent argues that this case is one that arises under school law and should have initially been brought before the Commissioner of Education upon the initial declination of coverage by the board's insurer. The insurance policy is specifically geared to New Jersey School Districts and specifically refers to the school employee indemnification statute, N.J.S.A. 18A:16-6 and therefore this case properly belongs before the Commissioner of Education as it involves a controversy arising under school law. Respondents further argue that the case against NJSIG, the insurer for the respondent Ocean City Board of Education, is an improper direct action against NJSIG.

### **Petitioner's argument**

Petitioner argues that this matter should not be dismissed but be transferred back to the Superior Court as the Commissioner of Education does not have a primary jurisdiction over the matter and the N.J.A.C. filing requirements do not apply. Petitioner contends that its action against NJSIG was a declaratory judgment action in Superior Court based on an insurance policy provision where petitioner was an "insured." The Superior Court did not consider petitioner's summary judgment argument based on the liability coverage provision and erred in issuing the September 19, 2024, order determining it did not have jurisdiction to decide a question under N.J.S.A. 18A:6-16 and referred this case to the Commission of Education. Petitioner maintains that the six-year statute of limitations for declaratory judgment actions controls here and not the ninety-day limitation set forth in N.J.A.C. 6A:3-1.3(i).

Petitioner further argues that since Judge Pickering's September 19, 2024, order referred this matter to the Commissioner of Education, the matter should be deemed filed with the Commissioner as of that date. Also, to the extent that Judge Pickering's order stated the Superior Court lacked jurisdiction in this case and that jurisdiction was proper with the Commissioner of Education, R. 1:13-4(a) preserved the continued viability of suits filed in the wrong forum.

Petitioner also argues that the direct action against NJSIG is not improper as petitioner is an insured under the policy and not an injured third party. Petitioner further argues that even if the ninety-day time period applies, it was waived by respondent as never having been raised previously.

Finally, petitioner argues that N.J.A.C. 6A:3-1.16 allows for the relaxation of the rules in the Commissioner's discretion in any case where a strict adherence thereto may be deemed inappropriate or unnecessary or may result in injustice.

The following facts are not in dispute and I **FIND** as follows:

- 1) Robert DiLullo was employed by the Ocean City Board of Education as a substitute teacher at Ocean City High School during the 2006 – 2007 school year.
- 2) On March 20, 2020, plaintiff M.L. filed a cause of action against DiLullo, Ocean City High School, Ocean City School District, Ocean City Board of Education, et. al. in the case docketed as CPM-L-000095-20.
- 3) M.L. alleged that, in or about the winter and spring of 2007, DiLullo did sexually groom, contact, abuse and molest plaintiff, who was a minor at the time.



- 4) By letter, dated August 3, 2020, Robert DiLullo, through counsel, provided notice to Ocean City Board of Education and the Ocean City School District of the lawsuit CPM-L-95-20 and demanded a defense and indemnification pursuant to N.J.S.A. 18A:16-6 for Robert DiLullo.
- 5) By letter, dated October 6, 2020, the Ocean City defendant's insurer, third party defendant NJSIG denied all coverage to DiLullo.
- 6) The M.L. lawsuit also contained allegations that DiLullo sexually assaulted M.L. at DiLullo's private residence during the summer of 2007 when he was not employed by OCBOE. DiLullo's homeowner's insurer, High Point, filed a declaratory judgment action seeking a declaration that they did not owe DiLullo a defense or indemnification for M.L.'s claims (Docket Number CPM-L-307-20).
- 7) Legal counsel provided by High Point filed an Answer to the M.L. lawsuit on behalf of DiLullo and also asserted a crossclaim for indemnification against the OCBOE.
- 8) On February 22, 2021, the Court entered an order consolidating the two cases.
- 9) DiLullo retained Michael Barker, Esq, to represent his interests as an individual defendant in the consolidated litigation of the declaratory judgement action and the underlying M.L. lawsuit.
- 10) On September 19, 2024, Judge Pickering denied DiLullo's and NJSIG's cross motions for summary judgment finding that "This court does not have jurisdiction of the matter; instead, jurisdiction rests with the Commissioner of Education. This matter is referred to the Commissioner of Education."

(See Petitioner's Petition for Legal Defense Costs Pursuant to N.J.S.A. 18A:16-6, Paragraphs 1, 5, 6, 8, 11, 15, 16, 17, 18 19, 20 and 23.)

No appeal of Judge Pickering's September 19, 2024, order was filed.

Petitioner filed his Petition for Legal Defense Costs Pursuant to N.J.S.A. 18A:16-6, dated January 7, 2025, with the Commissioner of Education on January 16, 2025.

### **LEGAL ANALYSIS AND CONCLUSION**

The New Jersey Administrative Code permits the filing of motions to be made in administrative hearings. N.J.A.C. 1:1-12.1, et seq. A Motion to Dismiss is not specifically enumerated under the Administrative Code, but an ALJ may proceed in the absence of a specific regulation in accordance with the New Jersey Court Rules, to achieve "just results, simplicity in procedure, fairness in administration and the elimination of unjustifiable expense and delay." N.J.A.C. 1:1-1.3(a). The common method for resolving a case on the papers in an administrative proceeding, without a hearing, is by a motion for summary decision under N.J.A.C. 1:1-12.5.

N.J.A.C. 1:1-12.5 provides that summary decision should be rendered "if the papers and discovery which have been filed, together with the affidavits, if any, show that there is no genuine issue as to any material fact challenged and that the moving party is entitled to prevail as a matter of law." Our regulation mirrors R. 4:46-2(c), which provides that "the judgment or order sought shall be rendered if the pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact challenged and that the moving party is entitled to a judgment or order as a matter of law."

A determination whether a genuine issue of material fact exists that precludes summary decision requires the 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 fact finder to resolve the allegedly disputed issue in favor of the non-moving party. Our courts have long held that "if the opposing party offers . . .

only facts which are immaterial or of an insubstantial nature, a mere scintilla, 'fanciful frivolous, gauzy or merely suspicious,' he will not be heard to complain if the court grants summary judgment." Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520, 529 (1995) (citing Judson v. Peoples Bank and Trust Co., 17 N.J. 67, 75 (1954)).

The "judge's function is not himself [or herself] to weigh the evidence and determine the truth of the matter but to determine whether there is a genuine issue for trial." Brill, 142 N.J. at 540 (citing Anderson v. Liberty Lobby, 477 U.S. 242, 249, 106 S. Ct. 2505, 2511, 91 L. Ed. 2d 202, 213 (1986)). When the evidence "is so one-sided that one party must prevail as a matter of law," the trial court should not hesitate to grant summary judgment. Liberty Lobby, 477 U.S. at 251-2, 106 S. Ct. at 2512, 91 L. Ed. 2d at 214.

**I CONCLUDE** that this matter is ripe for summary decision since there are no issues of material fact in dispute and that respondent is entitled to summary decision as a matter of law as set forth below.

"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. Board of Education, City of Trenton of Mercer County, 221 N.J. 192, 201-202 (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. Bd. of Educ., 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.

Pursuant to N.J.A.C. 6A:3-1.3(f), “If a matter is transferred to the Commissioner by a court, the parties shall be responsible for ensuring that the order of transfer, pleadings, and any other pertinent papers are forwarded to the Commissioner, c/o the Director, Office of Controversies and Disputes, New Jersey Department of Education, 100 River View Plaza, PO Box 500, Trenton, New Jersey 08625-0500, either by the court or by the parties themselves. Where the documents filed do not sufficiently conform to the requirements of this section and N.J.A.C. 6A:3-1.4, the complainant will be asked to resubmit the matter to the Commissioner in the form of a duly conformed petition of appeal, to which the respondent(s) will then be directed to file an answer in accordance with N.J.A.C. 6A:3-1.5.”

N.J.A.C. 6A:3-1.3(i) requires that “The petitioner shall file a petition no later than the 90<sup>th</sup> day from the date of receipt of the notice of a final order, ruling, or other action by the district board of education, individual party, or agency, that is the subject of the

requested contested case hearing. This rule shall not apply in instances where a specific statute, regulation, or court order provides for a period of limitation shorter than 90 days for the filing of a particular type of appeal.”

This regulatory period of limitation set forth in N.J.A.C. 6A:3-1.3(i) has been approved by the New Jersey Supreme Court as a means of providing “a measure of repose, an essential element in the proper and efficient administration of the school laws.” Kaprow v. Berkeley Township Bd. Of Educ., 131 N.J. 572, 582 (1993). The limitation period is jurisdictional, meaning that if it is violated the Commissioner has no jurisdiction to determine the merits of the petition, with extremely limited exceptions for matters of constitutional significance or of widespread public interest. The regulation has been widely applied for many years. The ninety-day period begins to run as of the date when the “plaintiff learns, or reasonably should learn, the existence of that state of facts which equate in law with a cause of action.” Kaprow, at 587.

DiLullo, through counsel, demanded a defense and indemnification pursuant to N.J.S.A. 18A:16-6 from the Ocean City Board of Education by letter, dated August 3, 2020. By letter, dated October 6, 2020, the Ocean City Defendant’s insurer NJSIG denied all coverage to DiLullo. Arguably, this petition for defense costs should have been filed with the Commissioner of Education within ninety days of the October 6, 2020, denial as required by N.J.A.C. 6A:3-1.3(i), as petitioner then learned of those facts which equate in law with a cause of action according to Kaprow. Nevertheless, Judge Pickering’s September 19, 2024, order determining that he did not have jurisdiction and that jurisdiction rested with the Commissioner of Education, required the petitioner to file his petition with the Commissioner of Education at the very latest, within ninety days of that triggering event. N.J.A.C. 6A:3-1.3(f) places the burden on the parties of ensuring that the order of transfer, pleadings and any other pertinent papers are forwarded to the Commissioner either by the court or the parties themselves. This record is devoid of any action taken by the Superior Court to effectuate a transfer or of any efforts taken by the parties to ensure the Superior Court effectuated a transfer of this matter to the Commissioner of Education. What is clear is that Petitioner did not file his petition with

the Commissioner of Education until January 16, 2025, more than ninety days after the September 19, 2024, order of transfer. Since N.J.A.C. 6A:3-1.3(i) is jurisdictional, petitioner's untimely filing is fatal.

I **CONCLUDE** that petitioner failed to file his petition with the Commissioner in a timely fashion, and that it was filed outside the allowable ninety days as required by N.J.A.C. 6A:3-1.3 (a) and (i) and therefore the Commissioner has no jurisdiction to determine the merits of Mr. DiLullo's petition. I further **CONCLUDE** that the Board's motion for summary decision is **GRANTED**, and the petition is **DISMISSED**.

### **ORDER**

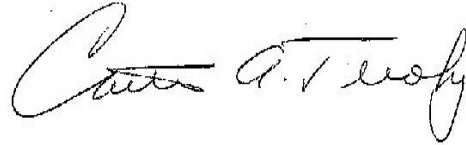
For the reasons stated above, it is hereby **ORDERED** that respondent's motion for summary decision is hereby **GRANTED**. Petitioner's petition is **DISMISSED**.

I hereby **FILE** this initial decision with the **COMMISSIONER OF THE DEPARTMENT OF EDUCATION** for consideration.

This recommended decision may be adopted, modified, or rejected by the **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 **COMMISSIONER OF THE DEPARTMENT OF EDUCATION**. Exceptions may be filed by email to [ControversiesDisputesFilings@doe.nj.gov](mailto: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.



July 24, 2025

DATE

\_\_\_\_\_  
**CATHERINE A TUOHY, ALJ**

Date Received at Agency:

\_\_\_\_\_

Date Mailed to Parties:

\_\_\_\_\_

CAT/gd

## **APPENDIX**

### **EXHIBITS**

#### **For Petitioner**

Petition for Legal Defense Costs pursuant to N.J.S.A. 18A:16-6 dated January 7, 2025

Brief in opposition to motion to dismiss with attached Exhibits 1 through 3, dated March 10, 2025

Reply to supplemental letter brief, dated June 2, 2025

#### **For Respondents**

Motion to dismiss in lieu of an answer, supporting brief and certification of counsel dated February 27, 2025

Reply Brief in opposition to petitioner's opposition brief and in further support of respondent's motion to dismiss, dated March 19, 2025, and received April 24, 2025

Supplemental letter brief, dated April 30, 2025