

113-26
OAL Dkt. No. EDU 10505-25
Agency Dkt. No. 171-5/25

New Jersey Commissioner of Education
Final Decision

Michael Smurro,

Petitioner,

v.

Board of Education of the Township of
Neptune, Monmouth County,

Respondent.

The record of this matter, the Initial Decision of the Office of Administrative Law (OAL), and the exceptions filed by petitioner Michael Smurro pursuant to *N.J.A.C. 1:1-18.4* have been reviewed and considered. Respondent Board of Education of the Township of Neptune (Board) did not submit a reply.

This matter concerns petitioner's request for indemnification pursuant to *N.J.S.A. 18A:16-6* for the defense of an Order to Show Cause (OTSC) filed by the State Board of Examiners (Examiners). The statute requires boards to "defray all costs" of civil actions brought against employees "for any act or omission arising out of and in the course of the performance of the duties of . . . employment." *N.J.S.A. 18A:16-6*. The OTSC proceedings, which are still pending, seek to suspend petitioner's certificates based upon an arbitrator's finding in a tenure matter

that petitioner participated in a restaurant altercation during which he used poor judgment by challenging a patron to a fight and throwing a cup of beer at him.¹

The parties agreed that no material facts were disputed in the instant matter and cross-moved for summary decision. The Board contended that the petition was untimely filed and that petitioner was not entitled to indemnification because the underlying act at issue in the OTSC proceedings—a restaurant altercation during non-work hours—did not arise out of and in the course of the performance of his employment.

The Administrative Law Judge (ALJ) granted the Board’s motion for summary decision. The ALJ agreed with the Board that the petition was untimely filed under *N.J.A.C. 6A:3-1.3(i)*. In particular, the ALJ found that the Board, through its counsel, denied petitioner’s request for indemnification in writing on March 13, 2023, but that the instant petition was not filed until May 30, 2025, well beyond the ninety-day timeframe set forth in *N.J.A.C. 6A:3-1.3(i)*. Additionally, the ALJ concluded that the indemnification claim lacked merit because petitioner’s actions during the restaurant altercation did not arise out of and in the course of his employment.

In his exceptions, petitioner reiterates the arguments already rejected by the ALJ. First, he argues that the matter was timely filed because there was no formal Board action in 2023 regarding his request for indemnification. Second, he argues that he is entitled to indemnification because the underlying OTSC matter relies exclusively on the tenure matter, and because tenure charges necessarily relate to the employment of tenured employees, the OTSC matter arises out of and in the course of petitioner’s employment with the Board.

¹ At the conclusion of the tenure matter, the arbitrator suspended petitioner for six months but did not remove him from his position as Vice Principal.

Upon review, the Commissioner adopts the Initial Decision as the final decision in this matter for the reasons stated therein. 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 90th 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). “Adequate notice must be sufficient to inform an individual of some fact that he or she has a right to know and that the communicating party has a duty to communicate.” *Id.* at 587.

The 90-day limitation period “represents a fair and reasonably-necessary requirement for the proper and efficient resolution of disputes under the school laws.” *Id.* 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 Paterson*, OAL Dkt. No. EDU 06076-14, Initial Decision at 6 (Nov. 6, 2014), *adopted*, Commissioner Decision No. 491-14 (Dec. 18, 2014).

The Commissioner concurs with the ALJ that the 90-day clock began running upon notification from Board counsel in March 2023 that the indemnification request was denied. *See DiLullo v. Bd. of Educ. of Ocean City*, Commissioner Decision No. 461-25 at 3 (Sept. 26, 2025) (holding that the 90-day filing period set forth at *N.J.A.C. 6A:3-1.3(i)* is applicable to indemnification claims made pursuant to *N.J.S.A. 18A:16-6*, a school law). The petition was not filed until May 2025, over two years later. The letter from Board counsel constituted clear and adequate notice of denial of the indemnification request. 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.

Additionally, the Commissioner concurs with the ALJ that petitioner's indemnification claim must also fail on the merits because his actions during the restaurant altercation did not arise out of and in the course of his employment. "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 in 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. of Trenton*, 221 N.J. 192, 201-02 (2015). As noted herein, "[t]he plain language of that statute requires that the underlying civil action be related to conduct falling within the employment duties of the school board employee." *Id.* at 202. The restaurant altercation occurred during non-work hours when petitioner was dining with his wife and had no connection to his employment duties.

Petitioner's reliance upon *Curcio v. South Orange-Maplewood School District, Essex County*, Commissioner Decision No. 239-24 (June 24, 2024), is unavailing. The ALJ correctly found that *Curcio* does not concern application of the 90-day rule. There, the Commissioner held that the issue of the petitioner's entitlement to indemnification under *N.J.S.A. 18A:16-6* in a Superior Court lawsuit was not ripe for review because it was not yet possible to determine whether petitioner was acting within the scope of his employment absent discovery or a hearing. Notably, however, the board of education had already retained an attorney to defend the petitioner in the ongoing Superior Court matter. In that matter, the board did not deny the indemnification request or allege that the petition was untimely filed. The Commissioner further held that he

need not decide the indemnification matter prior to the conclusion of the underlying legal action for which the petitioner sought indemnification.

This case is different. Here, unlike in *Curcio*, petitioner had clear written notice that the Board had denied his request for indemnification, which triggered the start of the 90-day limitation period. In addition, here, following discovery and a hearing, an arbitrator found that petitioner was involved in a restaurant altercation during non-work hours, and petitioner does not deny that fact. Indeed, petitioner acknowledges that the OTSC is based entirely upon the arbitrator's findings and conclusions in the tenure matter with respect to the restaurant altercation and nothing else. Thus, here, unlike in *Curcio*, the issue of indemnification is ripe for review because a sufficient record is available to determine by a preponderance of evidence that the OTSC matter is not related to conduct that arose out of an act that took place in the course and scope of petitioner's employment duties.

Moreover, the ALJ properly rejected petitioner's argument that the underlying OTSC matter arises out of and in the course of petitioner's employment with the Board because it relies exclusively on the tenure matter, which necessarily relates to employment of tenured employees. The Commissioner agrees with the ALJ that instead of focusing on the "substance of the charge itself," *i.e.*, the restaurant altercation, petitioner "relies upon his status as a Board employee. If this were sufficient, the statutory prerequisite [that the underlying civil action concern conduct that arose out of and in the course of his employment] would be meaningless." Initial Decision, at 11. It is well-established that a statute should not be interpreted in a manner that would "render part of it superfluous." *Med. Soc. of N.J. v. N.J. Dep't of Law & Public Safety*, 120 N.J. 18, 27 (1990).

Accordingly, the Initial Decision is adopted, the Board's motion for summary decision is granted, and the petition of appeal is hereby dismissed.

IT IS SO ORDERED.²



COMMISSIONER OF EDUCATION

Date of Decision: March 30, 2026
Date of Mailing: March 30, 2026

² 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
CROSS-MOTIONS FOR
SUMMARY DECISION

OAL DKT. NO. EDU 10505-25

AGENCY DKT. NO. 171-5/25

MICHAEL SMURRO,

Petitioner,

v.

**NEPTUNE TOWNSHIP, BOARD OF
EDUCATION, HUNTERDON COUNTY,**

Respondent.

Stephen J. Edelstein, Esq., for petitioner (Weiner Law Group, attorneys)

Andrew L. Schwartz, Esq., for respondent (Schwartz Law, LLC, attorneys)

Record Closed: November 17, 2025

Decided: January 9, 2026

BEFORE **JUDITH LIEBERMAN, ALJ:**

STATEMENT OF THE CASE

Petitioner Michael Smurro seeks indemnification, under N.J.S.A. 18A:16-6, from the Neptune Township Board of Education (“Board” or “District”) for the cost of his defense of an Order to Show Cause (“OTSC” or “Order”) that was initiated by the State Board of

Examiners (“SBOE”). The parties filed cross-motions for summary decision. Is petitioner entitled to summary decision? No. His petition was filed more than ninety days after he was notified that the Board would not indemnify him, and the allegations in the OTSC do not arise out of or in the course of his employment, as required by N.J.S.A. 18A:16-6. The Board is thus entitled to summary decision.

PROCEDURAL HISTORY

On June 9, 2025, petitioner filed the underlying petition of appeal with the Department of Education. The Department of Education transmitted the matter to the Office of Administrative Law, where it was filed as a contested case on June 11, 2025. N.J.S.A. 52:14B-1 to -15; N.J.S.A. 52:14F-1 to -13. The parties filed cross-motions for summary decision, and the record for the motions closed on November 17, 2025.

FACTUAL DISCUSSION AND FINDINGS

The following is undisputed:

1. Smurro was employed by the Board as a vice principal and was tenured during the times relevant to this matter.
2. On April 24, 2021, Smurro was involved in an incident that did not occur while he was working in his capacity as vice principal. Pet’r’s Br. at 6; P-4. He and his wife were involved in an altercation at a restaurant, which did not occur during Smurro’s work hours and did not relate to the performance of his work duties.
3. On May 24, 2021, the District certified five tenure charges against Smurro for unbecoming conduct that concerned his behavior during the April 24, 2021, incident and sought his removal. Id. at 34.
4. On July 11, 2022, an arbitrator found Smurro guilty of one of the charges. He was reinstated to his position, subject to a six-month paid suspension.

5. On or about December 13, 2022, the SBOE filed an OTSC directing Smurro to show cause why his educational certificates should not be suspended. The OTSC relied upon the arbitrator's findings. P-3.
6. On March 10, 2023, Smurro notified the Board that he intended to seek indemnification from it for the costs of defending the OTSC, under N.J.S.A. 18A:16-6. P-5. Smurro also advised the Board that he would file a motion to dismiss, arguing that the OTSC proceeding "should be barred as it has been resolved in final and binding arbitration, through a process under the Commissioner's authority." Ibid.
7. On March 13, 2023,¹ the District denied the indemnification request because his actions that were the subject of the OTSC did not arise out of and in the course of the performance of his duties as a school administrator. P-6.
8. On March 10, 2023, Smurro filed a motion to dismiss in lieu of an answer. P-8 at 2. The motion was denied on September 15, 2023. Ibid.
9. The OTSC was transmitted to the Office of Administrative Law on March 14, 2023. P-7.
10. On May 15, 2024, the SBOE filed a motion for summary decision. On June 21, 2024, Smurro filed a cross-motion for summary decision and, in the alternative, for an order of inactivity. While the parties agreed that collateral estoppel applied, they disagreed concerning the application of the record of the arbitration proceeding. On August 8, 2024, Hon. Tricia M. Caliguire, ALJ, granted SBOE's motion in part, ordering that a hearing was required

¹ Although Smurro wrote that the District responded on March 15, 2023, he referenced a March 13, 2023, letter from the District's counsel to Smurro's counsel. Pet'r's Br. at 5; P-6.

concerning the appropriate penalty. Judge Caliguire denied petitioner's cross-motion and motion for an order of inactivity. P-8.

11. Before the scheduled hearing dates, the New Jersey Supreme Court granted a petition for certiorari in a case that addressed the question of whether the SBOE can seek suspension or revocation of a certificate when the arbitration of tenure charges resulted in reinstatement. P-9; P-10; P-11.
12. On April 15, 2025, Smurro again requested indemnification of his costs associated with this defense of the OTSC and filed a request under the Open Public Records Act ("OPRA") for the Board's meeting minutes relating to its denial of his request for indemnification. P-11.
13. On April 17, 2025, the District's Business Administrator and Board Secretary responded to the OPRA request by advising that the Board did not discuss Smurro's indemnification request. P-12.
14. On May 13, 2025, Smurro asked the Board's counsel for a response to his request for indemnification. P-13. On May 19, 2025, the Board's attorney advised that it was still rejected. Ibid.
15. On May 30, 2025, Smurro filed his petition seeking indemnification.

Parties' Arguments

The parties agree that there are no material issues in dispute and that two legal issues must be decided: (1) whether the petition was filed in accordance with N.J.A.C. 6A:3-1.3(i); and (2) whether the OTSC concerned actions that arose out of and in the course of Smurro's employment, as required by N.J.S.A. 18A:16-6.

The Board asserts that Smurro violated N.J.A.C. 6A:3-1.3(c) (the "ninety-day rule") because he did not file his petition within ninety days of March 13, 2023, when he was notified that the Board would not indemnify him. Petitioner asserts that he satisfied the

“ninety-day rule” because the Board did not reject his request for indemnification. While he acknowledges that the Board’s attorney advised him, via a March 13, 2023, letter, that his request was rejected, he relies instead upon the response to his April 15, 2025, OPRA request, which indicated that the Board did not discuss his indemnification request. He also argues that the Commissioner held in Curcio v. S. Orange Maplewood Sch. Dist., Essex Cnty., OAL Dkt. No. EDU 04142024, adopted, Comm’r (June 24, 2024), that a petition seeking indemnification need not be filed prior to the conclusion of the matter for which indemnification is sought. In response, the Board asserts that the March 13, 2023, letter “unequivocally communicated” that his request had been denied. Resp’t’s Br. at 4.

Petitioner acknowledges that his actions that are the subject of the OTSC and the tenure charges were outside the scope of his employment. Pet’r’s Reply Br. at 4. He argues, however, that the tenure charges “necessarily relate[.]” to his “employment as such matters seek dismissal from employment and can only be prosecuted against employees of boards of education.” Ibid. Because the OTSC “relies exclusively on the [arbitrator’s] findings and conclusions” in the tenure matter, it “must therefore arise out of or in the scope of” his employment. Pet’r’s Br. at 13. The Board disagrees, arguing that, for indemnification to be possible, the underlying actions must actually relate to the actor’s employment.

Summary Decision 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. Because the facts relied upon by both parties are not in dispute, summary decision is appropriate.

Timeliness

N.J.A.C. 6A:3-1.3(i) requires that appeals from final decisions of district boards of education must be filed with the Commissioner within ninety days:

The petitioner shall file a petition no later than the 90th 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.

“The ninety-day rule has been strictly followed and applied almost without exception. D.Q. o/b/o S.Q. v. Sch. Dist. of Newark, 2009 N.J. AGEN LEXIS 640 (Jan. 21, 2009). In Dreher v. Jersey City Bd. of Educ., a petition filed only two days after the ninety-day period was dismissed as untimely. 1987 S.L.D. 1706, aff’d, 1988 S.L.[D]. 2439 (State Bd. of Educ. 1988), rev’d on other grounds, A-6120-82 (App. Div. 1989), cert. denied, 117 N.J. 138 (1989). Hendrickson v. Bd. of Educ. of the City of Rahway, Union Cnty and Ray Lopez, Bd. Member, 2018 N.J. AGEN LEXIS 164, *13–14 (Mar. 5, 2018), adopted, Comm’r, (Apr. 13, 2018).²

Relaxation of the rule may be permissible if exceptional circumstances have been demonstrated.

The rules in this chapter shall be considered general rules of practice to govern, expedite and effectuate the procedure before, and the actions of the Commissioner in connection with, the determination of controversies and disputes under the school laws. Where such rules do not reflect a specific statutory requirement or an underlying rule of the OAL, they may be relaxed or dispensed with by the Commissioner, in the Commissioner's discretion, in any case where a strict

² This decision and other unpublished and administrative decisions cited here are not binding. They are referenced because they provide relevant guidance.

adherence thereto may be deemed inappropriate or unnecessary or may result in injustice.

[N.J.A.C. 6A:3-1.16.]

However, this relief has been rarely granted.

“Such authority is rarely invoked unless strict adherence to the rule would be inappropriate, unnecessary or where injustice would occur, or where the Commissioner finds the presence of a substantial constitutional issue or other issue of fundamental public interest beyond that of concern only to the parties themselves.” [Snow v. Bd. of Educ. of the Twp. of Moorestown, 2007 N.J. AGEN LEXIS 312 (April 20, 2007).] In fact, 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. AAA School LLC v. Passaic Cnty. Educ. Servs. Comm'n, Passaic Cnty, 2014 N.J. AGEN LEXIS 397 (June 18, 2014).

[Hendrickson v. Bd. of Educ. of the City of Rahway, Union Cnty and Ray Lopez, Bd. Member, 2018 N.J. AGEN LEXIS at *13-14.]

Smurro cites Curcio v. S. Orange Maplewood Sch. Dist., Essex Cnty., OAL Dkt. No. EDU 04142-24, as support for his argument. Curcio was a school board employee and was the subject of a civil complaint filed in the Superior Court by a former student. He sought an order directing the school board to indemnify him. Although an answer was filed by counsel on behalf of him and the school district, the school board did not respond to his request for indemnification.³ The ALJ concluded, and the Commissioner agreed, that whether Curcio was entitled to indemnification in the future was not ripe for review because it had not yet been determined whether his actions, as alleged in the civil complaint, related to conduct that fell within his employment duties. That matter had not yet progressed sufficiently to permit a finding with respect to this issue. In reaching this conclusion, the ALJ relied upon Azzaro v. Bd. of Educ. of City of Trenton, 277 N.J. Super. 427 (App. Div. 2023), certif. den., 258 N.J. 438 (2024), which noted that although a school

³ Two insurers agreed to provide a defense while disclaiming coverage for time periods that were not covered by their policies. Curcio's counsel asked the school board to provide full indemnification, notwithstanding the limitations of the policies. He did not receive a response to the request.

board “may initially deny defense costs, it may ultimately be responsible for reasonable legal fees if it is later determined that the employee was, in fact, working within the scope of their employment.” Id. at 441.

Neither Azzaro nor Curcio addressed the “ninety-day rule.” Rather, they addressed the manner in which a request for indemnification may proceed. Azzaro held that an employee must provide their employer reasonable notice of their request for indemnification and that even if a board of education initially rejects a request for indemnification, it may ultimately be responsible for legal fees and costs if it is later determined that the employee was working within the scope of their employment. And in Curcio, the Commissioner noted that he is “not required to decide the question of entitlement to indemnification prior to the conclusion of the action filed against the employee.” Final Decision (slip op. at 1). The Commissioner did not find, and the law does not suggest, that the “ninety-day rule” is inapplicable in cases like Smurro’s.

Smurro also argues that the Board did not issue a final order or ruling or take other action in response to his request for indemnification, and thus, the ninety-day period has not begun to run. In so arguing, he relies upon the response to his OPRA request that “there was no discussion with the Board on the topic of indemnity coverage[.]” P-12. The ninety-day period begins to run when the party “learn[s] from the Local Board [of Education] the existence of that state of facts that would enable him to file a timely claim.” Kaprow v. Bd. of Educ. of Berkeley Twp., 131 N.J. 572, 588–89 (1993). In Kaprow, the “final order, ruling or other action by the Local Board occurred when it appointed nontenured persons to positions to which Kaprow claim[ed] tenure rights.” Id. at 588. Although Kaprow learned of the appointments through “unofficial and informal” means, this was sufficient to trigger the limitations period. Ibid. The Court observed, “It is clear that Kaprow learned that the Local Board had in fact taken final and formal action. Kaprow obviously believed that his tenured status entitled him to one or both of those positions . . . and the notice he had received was adequate to enable him to pursue his claim. In the future, it would be better if such information and notice is officially authorized and communicated by the Local Board.” Ibid. However, Kaprow acknowledged in writing that he had “sufficient knowledge of the relevant facts to bring a RIF claim.” Ibid. The Court also found that Kaprow’s attempt to resolve his claim by negotiating with the Local Board

did not toll the ninety-day limitations period. “To insist under these circumstances that there be additional or more-specific notice will not further the objective of the regulatory scheme, and would only defeat the considerations of repose and interfere with the efficient administrations of the school laws.” Id. at 589; see also Frayne v. Bd. of Educ. of Highland Park, 2021 N.J. Super. Unpub. LEXIS 1143, *8 (June 16, 2021) (school board notified a teacher that it would take adverse action against her at a future date and offered a settlement agreement; the court held the teacher was “on written notice that her teaching position was in jeopardy at least three times prior to her actual . . . termination” and thus she had sufficient information about “the existence of that state of facts that would enable [her] to file a timely claim”) (citing Kaprow, 131 N.J. at 588–9).

Here, it is undisputed that, on March 13, 2023, the District advised Smurro, in response to his March 10, 2023, request for indemnification, that it determined he was ineligible for indemnification because his alleged actions did not arise out of and in the course of the performance of his duties as a school administrator. He thus had sufficient notice that his request had been denied. Nonetheless, he filed his petition on May 30, 2025, well over ninety days later. That Smurro asked again on April 15, 2025, does not change the fact that he was advised that the Board would not indemnify him under N.J.S.A. 18A:16-6 on March 13, 2023. Accordingly, because the petition was not filed in accordance with N.J.A.C. 6A:3-1.3(i) and exceptional circumstances that would warrant an exception to this rule are not present, I **CONCLUDE** that the petition must be dismissed.

Indemnification Prerequisite

“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 of Mercer Cnty., 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; see also Waters v. Bd. of Educ. of Toms River, 2011 N.J. Super. Unpub. LEXIS 3083, *12 (Dec. 22, 2011). (“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, OAL Dkt. No. EDU 07205-05, final decision, (July 7, 2008) (slip op. at 3), <http://lawlibrary.rutgers.edu/oal/search.shtml>).

Smurro acknowledges that the allegations against him concern actions that do not relate to the performance of his work duties. However, he contends that he is entitled to indemnification because the OTSC relies exclusively upon the tenure charge, which “necessarily relates” to his employment because it sought his dismissal. Pet’r’s Reply Br. at 4. This argument focuses on the outcome of the tenure charge against him, not the substance of the charge itself, and it effectively relies upon his status as a Board employee. If this were sufficient, the statutory prerequisite would be meaningless. Clearly, “legislation should be interpreted so that, if possible, full force and effect is given to every sentence, clause and word thereof.” Oldfield v. New Jersey Realty Co., 1 N.J. 63, 68 (1948). As noted above, the Supreme Court has underscored that “the act on which the charges are predicated [must arise] out of and in the course of performance of the duties of employment,” and Smurro has the burden of proving by a preponderance of the evidence that he is entitled to indemnification. Bower, 149 N.J. at 434. Accordingly, because the OTSC does not concern Smurro’s performance of his duties as a Board employee, I **CONCLUDE** that he has not demonstrated that he is entitled to indemnification of his legal fees and costs.

ORDER

I **ORDER** that petitioner’s motion is **DENIED** and respondent’s motion is **GRANTED**.

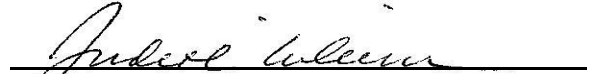
I hereby **FILE** this initial decision with the **COMMISSIONER OF THE DEPARTMENT OF EDUCATION** for consideration.

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 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, ATTN:**

BUREAU OF CONTROVERSIES AND DISPUTES, 100 Riverview Plaza, 4th Floor, PO Box 500, Trenton, New Jersey 08625-0500, marked "Attention: Exceptions." A copy of any exceptions must be sent to the judge and to the other parties.

January 9, 2026

DATE



JUDITH LIEBERMAN, ALJ

Date Received at Agency:

January 9, 2026

Date Mailed to Parties:

JL/mg