

128-26
OAL Dkt. No. EDU 12153-24
Agency Dkt. No. 149-5/24

New Jersey Commissioner of Education
Final Decision

John Gerald Sirotnak,

Petitioner,

v.

Board of Education of the Town of Clinton,
Hunterdon County and New Jersey Education
Association,

Respondents.

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

Upon review, the Commissioner concurs with the Administrative Law Judge (ALJ) that petitioner's claims against the Board of Education of the Town of Clinton (Board) must be dismissed pursuant to the 90-day rule because the petition was not filed within 90 days of the challenged decision. *N.J.A.C. 6A:3-1.3(i); Kaprow v. Bd. of Educ. of Berkeley Twp.*, 131 N.J. 572, 582 (1993). Furthermore, 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 claims against the New Jersey Education Association (NJEA) must be dismissed because, among other reasons discussed in the Initial Decision, petitioner has expressly abandoned them.

Accordingly, the Initial Decision is adopted as the final decision in this matter for the reasons stated therein.

IT IS SO ORDERED.¹



COMMISSIONER OF EDUCATION

Date of Decision: April 15, 2026
Date of Mailing: April 15, 2026

¹ 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

OAL DKT. NO. EDU 12153-24

AGENCY DKT. NO. 149-5/24

JOHN GERALD SIROTNAK,

Petitioner,

v.

**TOWN OF CLINTON BOARD OF
EDUCATION, HUNTERDON COUNTY, AND
NEW JERSEY EDUCATION ASSOCIATION,**

Respondents.

Richard G. Huizenga, Esq., for petitioner (Huizenga Law Offices, attorneys)

Rita F. Barone, Esq., for respondent, Clinton Board of Education (Flanagan,
Barone & O'Brien, LLC, attorneys)

Jason E. Sokolowski, Esq., for respondent, New Jersey Education Association
(Zazzali, PC, attorneys)

BEFORE **JUDITH LIEBERMAN, ALJ:**

Record Closed: November 14, 2025

Decided: February 5, 2026

STATEMENT OF THE CASE

Petitioner John Gerald Sirotnak, a former employee of respondent the Board of Education of the Town of Clinton (Board), was named as a defendant in civil complaints filed against him by former students. He filed a petition with the Commissioner of the Department of Education (Commissioner), in which he seeks an order directing the Board and respondent New Jersey Education Association (NJEA) to pay for his defense of the complaints and to indemnify him for the legal fees and costs he has incurred to date, under N.J.S.A. 18A:16-6 (the indemnification statute). The NJEA filed a summary-decision motion in which it contended that petitioner's claims are barred by res judicata, that the Commissioner does not have jurisdiction, and that there is no basis for recovery against the NJEA. In his response to the motion, petitioner abandoned his claim against the NJEA but expressly refused to withdraw his petition against the NJEA. Should the summary-decision motion be granted? Yes, because petitioner abandoned his claim. Also, petitioner's claim is barred by res judicata, because the matter has already been decided by the Superior Court; the indemnification statute does not apply to the NJEA; and the Commissioner does not have jurisdiction.

PROCEDURAL HISTORY

Petitioner filed its petition with the Commissioner on May 20, 2024. The Board submitted a motion to dismiss in lieu of an answer. The Department of Education transmitted the matter to the Office of Administrative Law (OAL), where on August 27, 2024, it was filed as a contested case. N.J.S.A. 52:14B-1 to -15; N.J.S.A. 52:14F-1 to -13. Petitioner failed to appear for the November 12, 2024, and December 10, 2024, prehearing conferences. During a February 11, 2025, prehearing conference, a briefing schedule was established for the Board's motion to dismiss. Petitioner filed his opposition brief on February 19, 2025, and the Board's reply brief was filed on March 4, 2025. The record for the motion closed on March 4, 2025, and on May 16, 2025,¹ the Board's motion

¹ An Initial Decision granting the motion was issued on April 25, 2025. It was superseded by the May 16, 2025, Order.

to dismiss was granted because petitioner's claim against it was time-barred under N.J.A.C. 6A:3-1.3(i).

On July 15, 2025, the NJEA filed its summary-decision motion. Petitioner received several extensions of the deadline for his response—over several months—because a related matter was pending before the Superior Court. Petitioner filed his brief on November 9, 2025, after the Superior Court matter was finalized. The NJEA filed a November 14, 2025, letter in reply, and petitioner responded the same day.

FINDINGS OF FACT

The following, taken from the pleadings, their accompanying certifications, and the certifications submitted in support of the summary decision motion, is undisputed.

Petitioner John Gerald Sirotnak was employed as a teacher by the Board from sometime in the 1960s through his retirement in the 1990s. In 2021, six individuals filed complaints against him in the Superior Court of New Jersey. The complaints concern petitioner's actions while he was employed by the Board between forty-five and fifty-five years ago. They allege negligence, negligent supervision, negligent hiring and retention, gross negligence, intentional infliction of emotional distress, breach of fiduciary duty, and violation of the New Jersey Law Against Discrimination, "Sexually Hostile Environment and Discrimination." Petition at ¶¶ 2–13.

Petitioner asked his former union, the NJEA, to provide his defense. The NJEA rejected the request because it does not have insurance coverage for claims involving events that allegedly occurred prior to 1976. *Id.* at ¶ 16. Petitioner also asked the Board to assist him in obtaining and paying for an attorney to defend the lawsuits. *Id.* at ¶ 17. Neither petitioner nor the Board were provided coverage by the insurer.²

² Summit Risk Services was the third-party administrator for QBE Insurance, which issued the Board's insurance policy. Petition at ¶ 17.

On September 13, 2021, petitioner filed in the Superior Court a complaint for indemnification under N.J.S.A. 18A:16-6 against the NJEA, the Board, its third-party administrator, and its insurer. R-F.

Petitioner filed his petition for indemnification with the Commissioner on May 20, 2024. He seeks a declaration that one or both respondents must provide and pay for his legal defense of the six Superior Court complaints; they must pay any damages, other than punitive damages, that are awarded to the plaintiffs; they must pay the “legal fees paid or owed by [petitioner] to his present privately retained attorneys, including legal fees and costs incurred in bringing this [p]etition”; and they must pay any additional fees and expenses that are incurred in the future. Petition at 12–13.

On March 20, 2025, Hon. Robert Ballard, Jr., P.J. Cv., Superior Court of New Jersey, granted the NJEA’s motion for summary judgment and ordered the dismissal of all claims against the NJEA. R-H. Judge Ballard held that the indemnification statute does not apply to the NJEA and that petitioner did not reference a contract, guideline, statement, or other authority that provides that the NJEA must represent him or pay for his legal defense. Ibid.

Petitioner abandoned his claims against the NJEA but refused to withdraw his petition against it. Pet’r’s Br. at 10.

CONCLUSIONS OF LAW

Summary decision is appropriate here because the material facts are not in dispute.

Because petitioner abandoned his claims, I **CONCLUDE** that summary decision shall be granted to the NJEA. To avoid confusion, I will briefly address the substance of the NJEA’s arguments.

Res Judicata

Res judicata precludes a party or its privies from relitigating claims that were or could have been raised in a prior action. Allen v. McCurry, 449 U.S. 90, 94 (1980). Res judicata requires “a final judgment by a court or tribunal of competent jurisdiction, identity of parties, issues, and causes of action.” N.M. v. J.G., 255 N.J. Super. 423, 431 (App. Div. 1992). “[T]he doctrine of res judicata provides that a cause of action between parties that has been finally determined on the merits by a tribunal having jurisdiction cannot be relitigated by those parties or their privies in a new proceeding.” Velasquez v. Franz, 123 N.J. 498, 505 (1991). Here, the claims at issue, which involved the same facts and parties, were adjudicated by the Superior Court and the claims against the NJEA were dismissed. Accordingly, I **CONCLUDE** that petitioner’s claims against the NJEA are barred by res judicata.

Indemnification

“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, Mercer Cnty., 221 N.J. 192, 201–02 (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.

The statute does not apply to the NJEA or any entity other than a board of education. Accordingly, I **CONCLUDE** that petitioner's claim against the NJEA for indemnification under N.J.S.A. 18A:16-6 must be dismissed.

Commissioner's Jurisdiction

The jurisdiction of the OAL over a contested case is "derivative of the authority of the agency that transmitted the contested case." In re Kallen, 92 N.J. 14 (1983); Wood v. Dep't. of Cmty. Affs., Bureau of Regul. Affs., 243 N.J. Super. 187 (App. Div. 1990) (citing N.J.S.A. 52:14B-1 to -15); see also Harjani v. Atl. City Elec. Co., 2013 N.J. AGEN LEXIS 498, (February 19, 2014). N.J.S.A. 18A:6-9 addresses the jurisdiction of the Department of Education:

The commissioner shall have jurisdiction to hear and determine, without cost to the parties, all controversies and disputes arising under the school laws, excepting those governing higher education, or under the rules of the State board or of the commissioner. For the purposes of this Title, controversies and disputes concerning the conduct of school elections shall not be deemed to arise under the school laws.

Notwithstanding the provisions of this section to the contrary, an arbitrator shall hear and make a final determination on a controversy and dispute arising under subarticle B of article 2 of chapter 6 of Title 18A of the New Jersey Statutes (C.18A:6-10 et seq.^[3]).

³ Tenure Employees Hearing Law.

[Emphasis added.]

See also Hudson v. Bd. of Educ. of Mount Olive, Morris Cnty., EDU 09142-08 Comm'r (September 24, 2009), <https://njlaw.rutgers.edu/collections/oal/> ("it is well settled that the Commissioner does not have jurisdiction over contractual disputes") (citing Picogna v. Bd. of Educ., Twp. of Cherry Hill, 249 N.J. Super. 332, 335 (App. Div. 1991)).

To the extent that petitioner relies upon his relationship with the NJEA to compel it to provide for his representation and to pay his legal fees and costs, he does not seek relief based upon violations of the school laws. I therefore **CONCLUDE** that the Commissioner does not have jurisdiction over this claim.

For the foregoing reasons, I **CONCLUDE** that the NJEA's motion for summary decision is granted with respect to all of the claims asserted against it by petitioner.

ORDER

I **ORDER** that the motion for summary decision filed by respondent NJEA is **GRANTED**, and thus the petition is dismissed with respect to this respondent.

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.

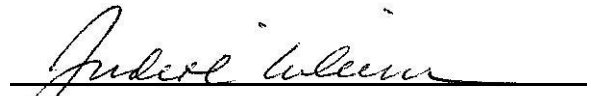
Within thirteen days from the date on which this recommended decision was mailed to the parties, any party may file written exceptions with the **COMMISSIONER OF THE DEPARTMENT OF EDUCATION**. Exceptions may be filed by email to ControversiesDisputesFilings@doe.nj.gov or by mail to Office of Controversies 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.

February 5, 2026

DATE

Date Received at Agency:

Date Mailed to Parties:



JUDITH LIEBERMAN, ALJ

JL/mg

APPENDIX

For respondent:

Brief in support of motion, July 15, 2025
Certification of Jason E. Sokolowski, Esq.
Certification of Katrina Homel
Letter in further support of motion, November 14, 2025

R-A Petition
R-B NJEA's answer
R-C NJEA's Guidelines
R-D Petitioner's Superior Court Complaint
R-E NJEA's Answer to Superior Court Complaint
R-F Petitioner's First Amended Superior Court Complaint
R-G NJEA's Answer to First Amended Complaint
R-H March 20, 2025, Superior Court Order

For petitioner:

Brief in opposition to motion, November 9, 2025
Letter, November 14, 2025



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

ORDER

OAL DKT. NO. EDU 12153-24

AGENCY DKT. NO. 149-5/24

JOHN GERALD SIROTNAK,

Petitioner,

v.

TOWN OF CLINTON

BOARD OF EDUCATION,

HUNTERDON COUNTY AND NJ

EDUCATION ASSOCIATION,

Respondent.

Richard G. Huizenga, Esq., for petitioner (Huizenga Law Offices, attorneys)

Rita F. Barone, Esq., for respondent (Flanagan, Barone & O'Brien, LLC, attorneys)

BEFORE JUDITH LIEBERMAN, ALJ:

STATEMENT OF THE CASE

Petitioner John Gerald Sirotnak, a former employee of respondent Board of Education of the Town of Clinton (Board), was named as a defendant in civil complaints filed against him by former students. He filed a petition in which he seeks an order directing the Board and respondent New Jersey Education Association (NJEA) to pay for

his defense of the complaints and indemnify him for the legal fees and costs he has incurred to date. The Board filed a motion to dismiss the petition because it was not filed in a timely manner. Should the motion to dismiss be granted? Yes. Under N.J.A.C. 6A:3-1.3(i), petitioner was required to file his petition within ninety days after he was notified that the Board would not defend or indemnify him.

PROCEDURAL HISTORY

Petitioner filed its petition with the Commissioner of the Department of Education (Commissioner) on May 20, 2024. The Board submitted a motion to dismiss in lieu of an answer. The Department of Education transmitted the matter to the Office of Administrative Law, where on August 27, 2024, it was filed as a contested case. N.J.S.A. 52:14B-1 to -15; N.J.S.A. 52:14F-1 to -13. Petitioner failed to appear for the November 12, 2024, and December 10, 2024, prehearing conferences. During a February 11, 2025, prehearing conference, a briefing schedule was established for the pending motion to dismiss. Petitioner filed his opposition brief on February 19, 2025, and the Board's reply brief was filed on March 4, 2025. The record for the motion closed on March 4, 2025.

DISCUSSION AND FINDINGS OF FACT

The following, taken from the pleadings and accompanying certifications, is undisputed.

Petitioner John Gerald Sirotnak was employed as a teacher by respondent Clinton Township Board of Education (Board) from sometime in the 1960s through his retirement in the 1990s. In 2021, six individuals filed complaints against him in the Superior Court of New Jersey.¹ The complaints concern petitioner's actions while he was employed by the Board between forty-five and fifty-five years ago. They allege negligence, negligent supervision, negligent hiring and retention, gross negligence, intentional infliction of

¹ The complaints were filed on August 2, 2021, September 8, 2021, and October 1, 2021. Cert. of Rita F. Barone, Esq. ("Barone Cert.") at ¶ 4.

emotional distress, breach of fiduciary duty, and violation of the New Jersey Law Against Discrimination, “Sexually Hostile Environment and Discrimination.” Petition at ¶¶ 2–13.

Petitioner asked his former union, the New Jersey Education Association (NJEA), to provide his defense. NJEA rejected the request because it does not have insurance coverage for claims involving events that allegedly occurred prior to 1976. Id. at ¶ 16.

Petitioner also asked the Board to assist him in obtaining and paying for an attorney to defend the lawsuits. Petition at ¶ 17. The Board “referred” him to Summit Risk Services (Summit), a third-party administrator for QBE Insurance, which issued the Board’s insurance policy. Ibid. On July 28, 2021, Summit advised the Board and petitioner that, on behalf of QBE, it denied coverage to petitioner.² It denied coverage because the policy does not apply to acts that occurred prior to January 1, 1986; it does not provide for the defense of the types of claims made against petitioner; and the allegations “would not be acts performed” in petitioner’s “duty to the Insured [the Board.]” Id. at ¶ 18; Cert. of Robert M. Tosti, Esq. (Tosti Cert.), R-2 at 6.

On September 13, 2021, petitioner filed in the Superior Court a complaint against the NJEA, the Board, Summit and QBE in which he sought indemnification. Barone Cert. at ¶ 6. On July 8, 2022, Hon. Robert G. Wilson, J.S.C., granted the Board’s motion to dismiss for lack of jurisdiction. The complaint was dismissed without prejudice. Id. at ¶ 9, R-A. Judge Wilson did not remand the matter to the Commissioner of the Department of Education or otherwise direct that the matter be transmitted to the Commissioner. Ibid.

Petitioner filed his petition for indemnification with the Department of Education on May 20, 2024. OAL-1. He seeks a declaration that one or both respondents must provide and pay for his legal defense of the six Superior Court complaints; they must pay any damages, other than punitive damages, that are awarded to the plaintiffs; they must pay the “legal fees paid or owed by [petitioner] to his present privately retained attorneys,

² It also denied coverage to the Board. Ibid.

including legal fees and costs incurred in bringing this [p]etition;” and they must pay any additional fees and expenses that are incurred in the future. Petition at 12–13.

Petitioner acknowledges that NJEA and the Board “and/or their insurance companies” have “refused to provide a lawyer to [him] and to date have refused to indemnify [him] for his legal expense incurred in defending” the civil complaints against him. Petition at ¶ 20. For this reason, he retained counsel, and as of the date of the petition filed in this matter, he has expended and/or incurred over \$100,000 in legal fees and costs. Id. at ¶ 21.

PARTIES’ ARGUMENTS

The Board contends that under N.J.A.C. 6A:3-1.3(i), the petition that was filed with the Commissioner is time-barred because it was filed more than ninety days after the Superior Court complaint was dismissed.

Petitioner contends that the Board did not “formally and in writing” refuse to provide coverage under N.J.S.A. 18A:16-6, which requires provision of a defense or indemnification under certain circumstances. Pet.’r’s Br. at 9. Without this, the ninety-day time period did not begin to run.³ He also argues that the date he filed his Superior Court complaint should control and that, under N.J.A.C. 6A:3-1.3(f), his complaint should have been automatically transferred to the Commissioner. He asserts, without citation to evidence in the record, that his counsel “could not get the file transferred from the Superior Court Clerk to the Department of Education . . . largely because of the Clerk’s inability to deal [sic] records in multiple vicinages.[.]” Pet.’r’s Br. at 8. For this reason, he filed a new petition directly with the Commissioner.

³ Petitioner also argues that the motion to dismiss should be denied because the Board referred to an incorrect regulation. This argument is without merit because it is clear from the Board’s brief that it intended to cite N.J.A.C. 6A:3-1.3(i), and it corrected its error in its reply brief.

LEGAL ANALYSIS AND CONCLUSION

Under N.J. Court Rule 4:6-2,⁴ when a motion to dismiss is made based on failure to state a claim upon which relief can be granted, if “matters outside the pleading are presented to and not excluded by the court, the motion shall be treated as one for summary judgment[.]” The summary decision standard will be applied here because the Board’s motion was accompanied by certifications with exhibits. Summary decision may be granted “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.” N.J.A.C. 1:1-12.5(b). The evidence shall be “viewed in the light most favorable to the non-moving party[.]” Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520, 540 (1995)(quoting Anderson v. Liberty Lobby, 477 U.S. 242, 249, 106 S. Ct. 2505, 2511, 91 L. Ed. 2d 202, 212 (1986)). Summary decision is appropriate here because the material facts are not in dispute.

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.

This provision “gives school districts the security of knowing that administrative decisions regarding the operation of the school cannot be challenged after ninety days.” Kaprow v. Bd. of Educ. Of Berkeley Twp., 131 N.J. 572, 582 (1993). It is “an essential element in the proper and efficient administration of the school laws.” Id. at 582.

⁴ N.J.A.C. 1:1-1.3 permits the OAL to look to the court rules for guidance.

In Nissman v. Board of Educ. of Twp. of Long Beach Island, 272 N.J. Super. 373 (App. Div. 1994), a school board and its employee disagreed about when the ninety-day period began. The court held that it began when the school employee “knew or should have known” of the Board’s determination concerning her employment status. Id. at 378.

“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).⁵ In Dreher v. Jersey City Bd. of Educ., a petition filed only two days after the ninety-day period was dismissed as untimely. Dreher, 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 (March 5, 2018), adopted, Comm’r, (April 13, 2018), Comm’r of Educ. Decision (rutgers.edu).

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

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

See also Kaprow, 131 N.J. at 591; Salazar-Linden v. Bd. of Educ. of Holmdel, 2009 N.J. Super. Unpub. LEXIS 2713, *13 (App. Div. October 28, 2009)(referring to Eisenberg v.

⁵ Administrative and unpublished decisions are not precedential. They are referenced here because they provide relevant guidance.

Bd. of Educ. Fort Lee, OAL Dkt. No. EDU 9451-01, S.B. No. 43-02 (November 5, 2003), aff'd, S.B. No. 31-07 (January 9, 2008), which “involved unique circumstances including intentional wrongdoing causing the Commissioner to relax the ninety-day time limit ‘in order to effectuate concerns for individual justice.’”)

On July 28, 2021, the Board, through its insurance carrier, advised petitioner that it would not cover the cost of his defense. Petitioner acknowledges that this communication was made in response to his request that the Board provide him with a defense. Thus, petitioner knew or should have known then that the Board denied his request, and under N.J.A.C. 6A:3-1.3(i), he should have filed his petition within ninety days of July 28, 2021. Even if his Superior Court complaint somehow served as an intervening event that altered the deadline, as of July 8, 2022, the date the complaint was dismissed without prejudice, petitioner was on notice that he needed to file his petition with the Commissioner. Six hundred and eighty-two days elapsed between the date of the Superior Court order and the date he filed his petition.

Petitioner has not asserted that extraordinary circumstances warrant an extension of the ninety-day limitations period, and none can be ascertained from the record. Rather, given that he promptly filed his Superior Court complaint and took no action for almost two years, it would appear that he abandoned his petition for defense and indemnification. Moreover, contrary to his assertion, the order dismissing the complaint did not remand the complaint to the Commissioner or otherwise provide for the automatic transfer of the case to the Commissioner. Thus, petitioner’s attempt to shift the blame for the delayed filing to a Superior Court clerk is without merit.⁶ Accordingly, I **CONCLUDE** that the petition is time-barred because it was not filed in compliance with N.J.A.C. 6A:3-1.3(i).

⁶ His citation to N.J.A.C. 6A:3-1.3(f) is also not persuasive because it expressly applies to matters that are transferred to the Commissioner by a court.

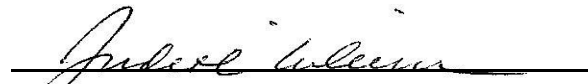
ORDER

I **ORDER** that the motion to dismiss filed by respondent Board of Education of the Town of Clinton is **GRANTED**, and thus the petition is dismissed with respect to this respondent. Respondent NJEA shall advise the OAL when its motion that is pending before the Superior Court has been addressed. A conference call will then be scheduled with the remaining parties.

This order may be reviewed by the **COMMISSIONER OF THE DEPARTMENT OF EDUCATION** either upon interlocutory review pursuant to N.J.A.C. 1:1-14.10 or at the end of the contested case, pursuant to N.J.A.C. 1:1-18.6.

May 16, 2025 _____

DATE



JUDITH LIEBERMAN, ALJ

APPENDIX

OAL:

OAL-1 Department of Education acknowledgement of receipt of petition of appeal, May 20, 2024

For respondent :

Brief in support of motion to dismiss, August 26, 2024

Certification of Rita F. Barone, Esq.

R-A Order issued by Hon. Robert G. Wilson, J.S.C., July 8, 2022

Reply brief in support of motion to dismiss, March 4, 2025

Certification of Robert M. Tosti, Esq.

R-1 Order issued by Hon. Robert G. Wilson, J.S.C., July 8, 2022

R-2 Summit Risk Services letter, July 28, 2021

For petitioner:

Brief in opposition to motion to dismiss, February 19, 2025

Certification of Richard Labbe, February 2, 2025